# AN EPITOME
OF
# HINDU LAW CASES
BY
*W.M.COGHLAN*

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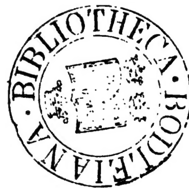
WITH

SHORT FOOT NOTES AND INTRODUCTORY CHAPTERS.

BY

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TO

THE HONOURABLE MR. JUSTICE WEST,

JUDGE OF H.M. HIGH COURT AT BOMBAY, ETC. ETC.

WITH THE COMPILER'S PROFOUND RESPECT

AND SINCERE REGARD.

# PREFACE.

This little book is compiled in the hope that it may be useful to students of Hindu Law, in England and in India, as a guide to the Law Reports and to the standard text-books.

W. M. C.

Tanna, *Feb.* 25. 1876.

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# INTRODUCTORY CHAPTERS.

## CHAPTER I.

### Sources of Law.

It is the theory of Hindu Law that it has been revealed by the Deity, either directly (*Sruti*) or by tradition (*Smriti*). The latter, or the *Dharma Shastra*, comprises municipal law.

According to Hindu views,* the *Smritis* were composed by the *Rishis*, whose names they bear, but Hindu tradition is here, as nearly in every case where it concerns literary history, almost valueless.

There are at present five dominant Schools of Law in India:—

1. *Bengal.*
2. *Mithila* (or Behar).
3. *Benares.*
4. *Maharastra* (or Bombay).
5. *Dravida* (Madras).

* West and Buhler, Dig. Introduction.

As will be seen when treating of succession, there is a singular diversion from the *Dravida* School in Malabar and Canara. The differences between these schools are generally slight, and need not be noticed in this elementary sketch, but the Bengal School differs materially from the others in regard to the law of inheritance, as may be seen from comparing the tables in the chapter on Succession.

We are more particularly concerned with the *Maharastra*, or Bombay School.

The authorities in Hindu Law * in Western India are, according to Colebrooke, the *Mitakshara* of *Vijnānesvara* and the *Mayūkhūs* of *Nilakantha*, especially the *Vyavaharamayukhu*. Morley adds, the *Vyavaharamādhava Nirnayasindhu, Smritikanstubha, Hemadri, Dattaka Mimàmsa*, and *Dattaka Chandrika*. The quotations of the *Shastris*, appended to their *Vyavasthas*, which perhaps afford the most reliable information on the subject, show that the following works are considered by them the sources of the law on this side of India :—

1. The *Mitakshara* of *Vijnānesvara*.
2. The *Mayūkhūs* of *Nilakantha*, and especially the *Vyavahara Mayūkhū*.
3. The *Viramitrodaya* of *Mitramisra*.
4 and 5. The *Dattaka Mimàmsa* of *Nanda Pandita*, and the *Dattaka Chandrika* of *Devānabhatta*.
6. The *Nirnayasindhu* of *Kamālākara*.

* West and Buhler, pp. 1, 2.

7 and 8. The *Dharmasindhu* of *Kāsinatha Upodhyaya*, and the *Samskarakanstubha* of *Anantadeva.*

9 and lastly. In certain cases the *Dharmasastras*, or *Smritis* and *Upasmritis*, or, as it is frequently expressed, the sayings of the sages (*Rishivakyani*), together with their commentaries.

The relative position of these works to each other may be described as follows:—In the Maratha country and in Northern Kanara, the doctrines of the *Mitakshara* are paramount, the *Vyavahara Mayūkhū* and the *Viramitrodaya* are to be used as secondary authorities only. They serve to illustrate the *Mitakshara* and to supplement it, but they may be followed so far only as their doctrines do not stand in opposition to the express precepts, or to the general principles of the *Mitakshara.* Amongst the secondary authorities the *Vyavahara Mayūkhū* takes precedence of the *Viramitrodaya.* It has been recently decided by the Bombay High Court in a case * not yet reported, that in the island of Bombay and in the province of Guzerat the *Vyavahara Mayūkhū* is to be preferred even to the *Mitakshara.* The *Dattaka Mimàmsa* and *Dattaka Chandrika*, the latter less than the former, are supplementary authorities on the law of adoption. Their opinions, however, are not considered of so great importance but that they may be set aside on general grounds, in case they are opposed to the doctrines of the *Vyavahara Mayūkhū*, or the *Dharmasindhu* and *Nirnayasindhu.*

* *Pandurang Naik* v. *Krishnaji Marji.*

The former is preferred by the Bengal School, and the latter by those of Mithila and Benares.

The *Dharmasindhu*, the *Samskharakanstubha*, and the *Nirnayasindhu* occupy an almost equal position in regard to questions on ceremonies and penances. They are more frequently consulted by the *Shastris* of the Maratha country than the *Mayūkhūs*, which refer to the same parts of the *Dharma*. Of the three, the *Nirnayasindhu* is held in the greatest esteem.

All points of law which may be left undecided by the works mentioned, may be decided by passages from the *Smritis* or *Dharmasastras*, or even the *Purānas*. The latter have less authority than the former, and may be overruled by them.

Where the revealed texts (*Sruti*), the tradition (*Smritis*), and *Purānas* are conflicting, the revealed text is the authority; if the latter two (*Smritis* and *Purānas*) contradict each other, the *Smriti* (tradition) is preferable. In case of a conflict between the rules of the *Smritis*, either may be followed, as reasoning on principles of equity (*Yūktivichara*) shall decide the solution.

The *Mitakshara* is the commentary of *Vijnānesvara*, on the *Institutes* of *Yajnavalkya*. The commentator, according to Colebrooke,* lived about the year 900 A.D., but Messrs. West and Buhler † incline to the belief that he flourished in the eleventh or twelfth century of the Christian era.

* Colebrooke, Inher. XI.

† West and Buhler, Dig. Introduction, V.

The *Vyavahara Mayūkhū*, or sixth ray of the sun, was composed by *Nilakantha*, probably at Poonah, about 1600 A.D.: it is a treatise on Civil and Criminal Law, and is treated with great respect throughout Western India, and, as has been observed, is of paramount authority in the island of Bombay, and in Guzerat.

The *Dàyabhāga*, a treatise on Inheritance, by *Jimuta Vahana*, is of high authority in Bengal, but in Western India is quoted only when supporting the tenets of the *Mitakshara* or *Vyavahara Mayūkhū*.

The *Dattaka Mimàmsa* is by *Nanda Pandita*, of whom, personally, little is known.

The *Dattaka Chandrika* is a more concise and more modern treatise on the same subject, by *Devanand Bhatta*.

Both works have been translated with annotations by the very learned late Mr. J. C. C. Sutherland, of the Bengal Civil Service.

## CHAPTER II.

### Marriage.

Marriage among Hindus is not of the nature of a civil contract, but is quasi a sacrament.* Marriage (*lagna*) forms the last of the ceremonies prescribed for the regenerated classes (*Brahmin, Kshatriya, Vaisya*), and the only one for the *Sudra.*

An unmarried man has been declared to be incapacitated for the performance of religious duties; that is to say, to offer the oblations deemed advantageous to his own soul and to the souls of his ancestors. No people attach greater importance to marriage than the Hindus; among them it is indispensable for the female sex, and for the male sex it constitutes the order of *Grihasta,* householder.

*Grihasta* † is the second period into which Hindus divide a man's life, the first being that of a *Brahmachari,* or religious student, the third that of *Vanaprasta* or hermit, and the fourth that of *Bhikshu,* or mendicant.

It ‡ completes for the man the regenerating cere-

* Mac. Prin. V. 58.
† Manu, IV. 1.
‡ Strange, Hin. Law, II. 35.

monies, expiatory, as is believed, of the sinful taint that every child is supposed to contract in its mother's womb, and is, as to the *Sudra* and women, the only one that is allowed.

Its obligatoriness is, as to women, among the ordinances of the *Veda*. Thus religion and law co-operate in its favour.

Hindu women are betrothed at a very early age, and the betrothment, in fact, constitutes the marriage, which cannot, on account of the early age of the bride, be consummated for some years after. The contract of betrothal is complete and irrevocable immediately on the performance of the appointed ceremonies, without consummation.

Except in Guzerat, no ceremony precedes consummation in the Bombay Presidency. If the husband die before consummation, the girl is entitled to all the rights and incurs all the duties of widowhood, the marriage not being annulled by the death of the betrothed husband.

The Courts * will not, however, order specific performance of a marriage between betrothed persons.

Second marriages after a husband's death are wholly unknown to Hindu Law, but in practice have always been common among the lower castes. They have, however, been made legal by Act XV. of 1856. This Act declares that no marriage between Hindus shall be invalid by reason of the woman having been previously betrothed

* See *Umed* v. *Nagindas*, VII Bo. H. Ct. R. 122.

or married, annuls on a second marriage the woman's interest in her deceased husband's estate, and provides for the guardianship of his children under the orders of the Civil Courts.

Unfortunately, this statute has been acted on in very few instances by the higher castes, and tens of thousands of child-widows are still brought up to lives of degradation and, most commonly, of vice.

This revolting custom is believed to be the fruitful cause of numerous child murders.

Polygamy is legally prohibited for men, unless for some good and sufficient cause, such as barrenness, disease, or the like; but the precept has in practice been generally disregarded. The following text of *Manu*, which, in fact, prohibits polygamy, has been held to justify it:—

"For the first marriage of the twice-born classes a woman of the same class is recommended, but for such as are impelled *by inclination* to marry again, women in the direct order of the classes are to be preferred."—*Manu*, III. 12.

According to the *Mitakshara*,* a wife superseded by a second marriage on the part of her husband has a right to receive from him as much as is expended in jewels, ornaments, or the like, for the second wife, unless such property has already been bestowed on her, in which case she is entitled only to half.

Writers on Hindu Law enumerate eight species of marriage:—1st, the *Brahma*; 2nd, the *Daiva*; 3rd, the *Arsha*;

* Mit. II. 11. 35.

4th, the *Prajapatya;* 5th, the *Asura;* 6th, *Gandharva;* 7th, the *Rakshasa;* and 8th, the *Paischa.*

The first four forms are technically peculiar to Brahmins, and the fifth, the *Asura,* is peculiar to Vaisyas and Sudras.

The most dignified form of marriage is the *Brahma.* It, with the *Daiva, Arsha,* and *Prajapatya,* are nominally confined to Brahmins, and presumed to be based on entirely disinterested motives. *Manu* thus describes a *Brahma* marriage:—

"The gift of a daughter, clothed only in a single robe to a man learned in the *Veda,* whom her father voluntarily invites and respectfully receives, is the nuptial rite called *Brahma.*"

Under the *Asura* form a pecuniary consideration is received by the father of the bride.

Sir Thomas Strange * doubts whether, in Southern India, any other form than the *Asura* be now observed. The Compiler has ascertained, from personal inquiry, that in the Deccan and Konkan the *Brahma* form is exclusively used among Brahmins, Prabhūs, and well-to-do Kunbis and other Sudras, although a secret payment is often made by the bridegroom to the bride's father. It has been said, in a very learned judgment of the Bombay High Court,† that the *Asura* form of marriage is prevalent among the Bhandaris of the Presidency. The Compiler is obliged to doubt whether this be strictly

* Strange, Hin. Law, II. 43.

† *Vijia Ranjam et Al.* v. *Laxmon and Laxmi,* VIII Bo. H. Ct. R. 244.

correct. He understands that the Hindu Bhandaris usually adopt the *Brahma* rite, and that the money payment to the bride's father has nothing to do with the ceremony, but is a private transaction.

Among the lower castes of the Konkan and Deccan, the Warlis, Katkaris, Bhils, Chambars, Mhars, and the like, the parties' heads and hands are joined, the bridegroom presents his bride with a dress and ornaments, and there is much drinking and merrymaking.

The other marriages, as described by *Manu*, are as follows:—

The *Daiva* rite is when the father delivers his daughter, dressed in bridal attire, to the officiating priest at the time of sacrifice. The *Arsha* rite requires the bridegroom to deliver to the bride's father one or two pairs of cows, for uses prescribed by the Veda.

The nuptial rite termed *Prajapatya* is when the father gives away his daughter with due honour, saying distinctly, "May you both jointly perform your civil and religious duties."

The *Gandarva* marriage is a love match when the union is brought about by amorous desires, or by a wish for domestic comfort.

The rape, or carrying off of a virgin in time of war, is followed by Hindu Law by the marriage of the parties, and the marriage is called *Rakshasa*. This provision will remind the reader of the Law of God * under the Mosaic dispensation.

* Deuteronomy, ch. xxi. v. 10–14.

Adultery in India is punishable under the Penal Code * in the adulterer only, on the complaint of the injured husband.

Breach of promise of marriage does not entail any special consequences under Hindu Law. Parties occasionlly resort to the Civil Courts to recover damages, as in England.

A wife's right of inheritance from her husband depends on her chastity. Adultery subjects her to degradation from caste, and, consequently, to loss of inheritance. By the theory only of Hindu Law, an unchaste wife's life is even forfeit to her injured husband, if the adulterer be of a lower caste.

Hindu Law, like the early codes of most nations, subjected the wife, among other members of a man's family, to corporal chastisement.

*Manu* † lays down thus: "A wife may be corrected, when she commits faults, with a rope, or the small shoot of a cane, but on the back part only, and not on a noble part by any means;" but another authority ‡ is more gallant: "Strike not, even with a blossom, a wife guilty of a hundred faults."

The Civil Law, and the English Law, gave a like permission.

The special property of women is called *Stridhan* (see note to *Reg.* v. *Natha Kalian et Al.*, p. 44). *Stridhan*, a

* Indian Penal Code, sect. 497.

† Col. Dig. II. 4.

‡ Note to II Digest, 209.

woman's *peculium,* is defined by *Manu* to be that which is given before the nuptial fire, at the bridal procession, or in token of love, or by a mother, brother, or father.

All the schools of Hindu Law appear to recognise these six primary divisions of *Stridhan,* not as a restriction of a greater number, but as a denial of a less.

Sir Thomas Strange,* principally on the authority of the *Smriti Chandrika,* elaborates the divisions to the number of twelve, thus:—

I. "What is given to a young woman, or to her husband in trust for her, at the time of her marriage, that is, during the space from the beginning to the close of the nuptial ceremony, commencing with the oblation for increase of prosperity, and ending with a return of the salutation; but not to be confined rigorously to the day, if given on account of the marriage. II. Her fee, or what is given to her in the bridal procession, upon the final ceremony, when the marriage, already contracted and solemnised, is about to be consummated, the bride having hitherto remained with her mother; as will appear in the next chapter. And the misery of Hindu marriages, at (on the part of the female) an immature, and often an inordinately disproportioned, age, is sensibly shown by the present in question being said to be intended as a bribe to induce her to repair the more cheerfully to the mansion of her lord. It may be here remarked of this *domi-ductio,* this bringing of the bride home, which, with the Hindus, is a consequence only of

* Strange, Hin. Law, 29.

the antecedent contract, that, among the Romans, it was an ingredient wanting to its completion; till when the bride was '*sponsa*' only, becoming '*uxor*, statim atque *ducta est*, quamvis nondum in cubiculum mariti venerit.' The fee of a Hindu wife has, moreover, this anomaly attending it, that upon her death it descends in a course of inheritance peculiar to itself. III. What is given to her on her arrival at her husband's house, when she makes prostration to her parents. IV. Gifts subsequent, by her parents or brothers. V. Upon her husband proposing to take another wife, the gratuity given by him to reconcile the first to the *supersession*, the measure of which seems not to be settled; as will also be more particularly seen in the following chapter. VI. What a woman receives from the bridegroom on the marriage of her daughter. VII. What she owes at any time to the good graces of her husband; as, for instance, a reward for performing well the business of the house in her department, called her perquisite. VIII. Anything given her at any time by any of her relations, being specially given;—a description sufficiently general to comprehend gifts so made to her before marriage, while yet an unbetrothed member of her own family; which are expressly included by various authorities. IX. The earnings of her industry, as by sewing, spinning, painting, and the like. Such are the instances of *Stridhan* specified in the *Smriti Chandrika:* upon the last of which it must be remarked that it does not occur in the enumeration given in the *Mitakshara*, any more than in *Manu;* while *Jimuta Vahana*, with

others, exclude it, observing that, though the proceeds be hers, they do not constitute 'woman's property,' and that her husband has a right to them, independent of distress. Yet it seèms admitted that her heirs, and not his, succeed to them after her death, she having survived him; the reason for the doubt as to their constituting *Stridhan* being, that it is payment by strangers, not a gift from her husband, or any of her relations—a circumstance belonging to the description of the property in question. The same objection applies to X. What is given to a wife for sending, or to induce her to send, her husband to perform particular work; which by some is included, by others denied. XI. Property which a woman may have acquired by inheritance, purchase, or finding;—what has been inherited by her being so classed by *Vijnāneswara*, whose authority prevails in the Peninsula; while it is otherwise considered by the writers of the Eastern School. Lastly, XII. The savings of her maintenance. Dying, without leaving issue, the *Stridhan* of a married woman vests by descent in her husband, he surviving her."

On inheritance, or partition, that which a widow possesses as *Stridhan* is taken into account in assessing her share, if a share be assigned to her, which, including the "*Stridhan*," cannot be more than a son's share.

A widow is not, by Hindu Law, *entitled* to a distinct share; and in the Deccan and Konkan mere maintenance is usually given.

In allotting maintenance, property held by a widow as *Stridhan* is not to be taken into account.*

Property inherited after marriage by a wife from her own family *is Stridhan.*†

Property inherited by a widow from her son, i.e., from her husband, *is not Stridhan.*‡

By the rule of Hindu Law, which, however, is superseded by different local usages so as to render it unpractical, the *Stridhan* of a woman whose marriage has not been consummated, goes first to her uterine brothers, then to her mother, and then to her father, and, if a married woman, to her lineal descendants (if any) in the female line.

In default of female issue, the line of descent varies indefinitely in different places.

Among the Sudras and low castes, a form of marriage prevails, called "*pāt*" in the Deccan, and "*mōhōtūr*" in Guzerat, in the case of the remarriage of either the man or the woman. There is scarcely any difference § between the legal status of a "*pāt*" wife and a "*lagna*" wife; both inherit legally, but the *lagna* position is the more honourable.

At present, cases of *pāt* marriages among Brahmins are not very uncommon.

* *Chandrabhagabai* v. *Kasinath*, II Bo. H. Ct. R. 340.
† *Bhasker* v. *Mahadeo et Al.*, VI Bo. H. Ct. R. 1.
‡ *Ampurnabai* v. *Sakharam*, VI Bo. H. Ct. R. 257.
§ West and Buhler, Chap. II. 6.

# CHAPTER III.

## Adoption.

Hindus believe that it is indispensably necessary, to the complete future beatitude of a man, that a son survive him for the performance of his funeral ceremonies, and for the payment of his debts, temporal and spiritual.

The Sanskrit for son is "*pûtra*," which *Manu* * derives thus:—" The son delivers his father from the hell named *pût*; he, therefore, was called *pûtra* by Brahma himself."

When marriage failed in its most important object, that of producing a son, or where sons born, died before their sire, the ancient Hindu Law was prodigal in supplying for the want, and provided eleven kinds of sons, besides the son lawfully begotten in wedlock.

In the present age only two forms of adoption prevail, *Dattaka*, the son given, and *Kritima*, the son made. The latter obtains only under the Mithila School of Law in the province of Behar; the former, with which only we are concerned, is the universal custom throughout the rest of India.

* Inst. IX. 138.

Failing a son, a widow may perform the obsequies of her husband, or, in her default, a brother of the whole blood may do so; but, it appears, not with the same effect as a son.

Adoption by a sonless Hindu widow, however necessary, and, indeed, absolutely indispensable, to the future perfection of her husband and his ancestors, is a right, and not a duty to be enforced by the civil power.

Sir Thomas Strange says:*—"No good Hindu lawyer sitting in the Courts in India would listen for a moment to an application to compel a childless Hindu to adopt, succession to his property being at all events provided for, whether he adopt or not."

It is convenient briefly to consider the question of adoption under the four following heads:—

1. Who may adopt.
2. Who may be adopted.
3. The effect of adoption.
4. The mode of adoption.

### 1. *Who may adopt.*

Any married male Hindu of sound mind, who is destitute of male issue, may adopt, viz., one who has not a son, a son's son, or a son's son's son.† All the above stand as sons for the purpose of the performance of funeral rites. A daughter's son or a granddaughter's son is not com-

* Strange, M. H. L. IV. 76.
† Manu, IX. 137.

petent. Only one adopted son can stand at one time, but an adopted son failing, successive adoptions are permitted.

A wife, or widow, may adopt, under authority given her by her husband; but the adoption in either case is on the husband's account, and not on the wife's. However, the adoption having taken place, the adopted son becomes the son to both, and is capable of performing the funeral rites to both.*

It appears certain that, in Western India and Madras, the husband's consent to adoption by a widow, or the consent of his "*Sapindas*," is not absolutely necessary, although desirable. The character of the widow adopting would appear to be of value in determining the question of the validity of the adoption.†

One who has been adopted may himself adopt a son. A family may thus be kept up by a succession of adoptions to any extent. This accounts for the extreme antiquity of the *Rajputra* families, some of whom are said to trace back in an unbroken line to before the Christian era.

Adoption cannot be made during the pregnancy of a wife, as then prospect of male issue presents itself.

Unmarried men may not adopt, since they are not in danger of *pût*; and it is doubtful whether a widower ought to adopt, since he may remarry.

* Strange, M. H. L. 79.

† See pp. 85, 86: *Rakmabai* v. *Radhabai* (5 Bo. H. Ct. R. 181); *Collector of Madura* v. *Sremati Matū* (2 Madras H. Ct. R. 206).

A man disqualified from inheritance may adopt, but cannot transmit inheritance.*

An outcaste may not adopt, he being incompetent to engage in any religious ceremony.† However, being free from the trammels of Hindu Law, he may effectually create an heir by testament.

### 2. *Who may be adopted.*

In the words of Mr. Sutherland,‡ "The first and fundamental principle is, that the person proposed to be adopted be one who, by a legal marriage with his mother, might have been the legitimate son of the adopter. By the operation of this rule a sister's son, and offspring of any other female whom the adopter could not have espoused, and one of a different class are excluded from adoption. In the present age, marriage with one unequal in class is prohibited." A widow proceeding to adopt, with the sanction of her husband or kindred, ought not to select one with whose father she could not have legally married.§ But this restriction applies to the three superior castes only, not to Sudras.

Proximity of kindred ought to determine the choice of an adopted son, the right of a whole brother's son to be adopted in preference to any other person being a received rule of law.

* Suth. Syn. H. 1, 2.
† Manu, XI. 185.
‡ Suth. Syn. H. II. 1, 2.
§ Datt. Mim. II. 33, 34.

The *Mitakshara*, the paramount authority on inheritance in Benares, Madras, and Western India (except in Guzerat and the Island of Bombay), lays down the following ruling:—

"'If among several brothers of the whole blood, one have a son born, *Manu* pronounces them all fathers of male issue by means of that son.' This is intended to forbid the adoption of others, if a brother's son can possibly be adopted. It is not intended to declare him son to his uncle, for that is inconsistent with the subsequent text."

*Nanda Pandita*, in the *Dattaka Mimansa*, extends the principle that proximity of kindred ought to determine the choice of an adopted son elaborately; but it cannot be regarded as a rigid maxim of law vitiating the adoption of a remote relative, or of a stranger when near kinsmen are available.*

Whether an only son can be adopted, is a moot point.

The Madras High Court (Scotland, C.J., and Frere, J.) has distinctly held that the adoption of an only son is, when made, valid according to Hindu Law. The prohibition to adopt an eldest or an only son was held to be directory only, and that an adoption of either, however blameable the giver, would, to every legal purpose, be good, the rule of "factum valet quod fieri non debet" being held to prevail in no code more than in that of the Hindus.

The Bombay High Court, in *Murbalkar* v. *Ranadive*,†

* Suth. Syn. H. II. 3.

† IV Bo. H. Ct. R. 190; Warden, Gibbs, JJ.

held that an only son should not be given in adoption; but that if such adoption has taken place, it cannot be set aside.

There is an *obiter dictum* to the same effect by the late Chief Justice Sausse, in *Mhalsabai* v. *Gulve.**

The Bengal High Court (L. Jackson, and Mitter, JJ.) has ruled to the contrary in *Raja Upendra* v. *Srimati Rani.*† The following words of Mr. Justice Mitter will not bear abridgment:—

"That the adoption of an only son is prohibited by the Hindu *Shastras* is beyond all controversy. The two leading authorities on the subject, namely, the *Dattaka Mimansa* and the *Dattaka Chandrika*, are unanimous in declaring that such an adoption should never be made.

"By no man having an only son (*èka-pûtra*) is the gift of a son to be ever made.

"He who has an only son, or one having an only son, the gift of that son must never be made. For as *Vasishtha* declares, 'An only son let no man give.' Therefore, a prohibition against acceptance is established by the text in question. Accordingly, *Vasishtha* says, 'Let no man give or accept,' &c.

"To this he subjoins a reason: 'For he is destined to continue the line of his ancestors.' His being intended for lineage being thus ordained, in the gift of an only son, the offence of extinction of lineage is implied. Now, this is incurred by the giver, and the receiver also.

* VII Bo. H. Ct. R. 26.

† I B. L. R. 221.

"By no man having an only son is the gift of a son ever to be made.

"The passages cited above are sufficient to show that the adoption of an only son is forbidden by the Hindu law. It has been said that the prohibition contained in these passages amounts to nothing more than a mere religious injunction, and that the violation of such an injunction cannot invalidate the adoption after it has once taken place. We are of opinion that this contention is not sound. It is to be remembered that the institution of adoption, as it exists among the Hindus, is essentially a religious institution. It originated chiefly, if not wholly, from motives of religion; and an act of adoption is, to all intents and purposes, a religious act, but one of such a nature that its religious and temporal aspects are wholly inseparable. 'By a man destitute of male issue only,' says *Manu*, 'must the substitute for a son of some one description always be anxiously adopted, for the sake of the funeral cake, water, and solemn rites.' It is clear, therefore, that the subject of adoption is inseparable from the Hindu religion itself, and all distinction between religious and legal injunctions must be necessarily inapplicable to it. Suppose, for instance, that a son has been adopted by a childless widow without the permission of her husband, the prohibition against such an adoption is contained in the following passage:—

"'Let not a woman either give or receive a son in adoption, unless with the assent of her husband.' Can it be said that such an adoption would be valid in

law? It will be observed that the language employed in the preceding text is precisely similar to that employed in the text prohibiting the adoption of an only son; and it would be difficult to suggest a reason why an adoption invalidated in the one case for temporal purposes, upon considerations arising out of the religious view of the matter, should not be equally invalidated in the other case upon similar grounds. One of the essential requisites of a valid adoption is that the gift should be made by a competent person, and the Hindu law distinctly says that the father of an only son has no such absolute dominion over that son as to make him the subject of a sale or gift. Such a gift, therefore, would be as much invalid as a gift made by the mother of the child without the consent of the father. It is to be borne in mind that the prohibition in question is applicable to the giver as well as to the receiver, and both parties are threatened with the offence of 'extinction of lineage,' in case of violation. Now, the perpetuation of lineage is the chief object of adoption under the Hindu Law; and if the adoptive father incurs the offence of 'extinction of lineage,' by adopting a child who is the only son of his father, the object of the adoption necessarily fails. It is true that the doctrine of *factum valet* is, to a certain extent, recognised by the lawyers of the Bengal School; but if we were to extend the application of this doctrine to the law of adoption, every adoption, when it has once taken place, will be, as a matter of course, good and valid, however grossly the injunctions of the Hindu Shastras might have been

violated by the parties concerned in it. The case of *Chinna Gaundan* v. *Kumara Gaundan* * is, no doubt, in favour of the appellant; but, for the reasons stated above, we are unable to concur with the learned judges who decided that case. On the other hand, we find two cases in our Presidency which are directly in favour of the view we have taken, and, what is of still greater importance, both these cases have been cited with approbation by Sir William Macnaghten himself. The first case is reported in page 178, volume II., of his work on the Hindu Law, and the second is to be found in page 179 of the same volume. We may also observe that the learned translator of the *Dattaka Chandrika* and the *Dattaka Mimansa* is of the same opinion."

It may safely be considered as certain that the adoption of an only or eldest son is *improper*, but as doubtful whether, when done, it be *invalid*.

There is a widespread prejudice against the adoption of a youngest son; but the objection thereto is sentimental rather than legal.

An orphan cannot be adopted, there being no one to *give* him, which is of the essence of *Dattaka*.

It is proper that adoption should take place when the adopted son is less than five years old; but there is no limit of age prescribed by Hindu Law as barring a right to be adopted.

Hinduism implies a certainty of a future state, and the

* I Madras H. Ct. R. 54.

doctrine that sin is so inherent in one's nature as to render requisite, specific means of expiation.

It institutes a series of ceremonies, commencing previous to conception, which, united, produce to the *Brahmin*, *Kshatrija*, and *Vaisya*, regeneration.

It is by the performance of these, or of some of these, in the home of the adopting father that filiation is effectually sealed; therefore the fewer of them that have been performed in the family of the adopted the better. It is considered very desirable that two ceremonies at least, *tonsure* and *cord investiture*, should be performed in the adopter's family,

As a matter of law, adoption is restricted to no particular age, and it is not barred by the pre-performance of any ceremonies, since they may be annulled by a sacrifice of fire,* known as "*pûtreshti*."

Marriage is a bar to adoption, not being capable of annulment when the adopted is not a *gôtraja sapinda*.

The person adopted must be of the adopter's caste.

### 3.—*The Effect of Adoption.*

An adopted son is considered in all respects as a begotten son. He is the heir to his adoptive father, and inherits property descended to the latter from his father or brothers. He cannot, after being adopted, claim the family or estate of his natural father, which follow the funeral oblations; he becomes connected both lineally and collaterally with the family into which he has been adopted.†

* Strange, M. H. L. 91.

† Manu, IX. 42; Datt. Chand. II. 19.

The adopted son is in exactly the position of the son naturally born in the family, plus only, that he is restricted from intermarrying with any girl of either his natural or adoptive families within the prohibited degrees; and his descendants are under a similar restriction in regard to the natural family until the third generation, namely, so long as remembrance may continue of the adoption.

If, after the adoption of a son, a son be legally begotten and born in marriage, the latter will take four-fifths and the adopted son one-fifth of the father's property.*

When a son has been adopted, the widow of the adopter has only a life interest in the family estate, her *Stridhan* † of course excepted, the adopted son being both manager and heir. Should they separate, the widow and adoptee take equal shares.

A valid adoption once made cannot on any account be cancelled.

### 4.—*The Modes of Adoption.*

There are five principal forms in adoption by *Dattaka*—

(1.) The giving away and reception, with the ceremony of pouring water on the hands of the adopter.

(2.) The placing the adopted son on the adopter's lap, the latter breathing on his head.

(3.) The fire-sacrifice, *Hōm.*

(4.) The revolution of a lamp, or the worship of an idol.

(5.) Gift of alms to Brahmins.

* Mitak. I. xi. 24; Steele's Castes, 44; I Madras H. Ct. R. 45.

† See page 11.

Such ceremonies as require the pronunciation of verses (*Mantras*) from the Vedas cannot be performed by *Sudras*, or by women of any caste.

The most important of these ceremonies, in the estimation of Hindus, is the (3) *Hōm* sacrifice; but nothing is essential to the legal finality of adoption but a giving and receiving of a proper child by proper parties. A lawful adoption is not to be set aside for any informality that may have attended its solemnisation.*

* Strange, M. H. L. 97.

## CHAPTER IV.

### PARTITION.

PARTITION is too wide and complex a branch of Hindu Law to treat of with any attempt at completeness in this elementary sketch.

It is proposed to state only the general law of partition where the *Mitakshara* and *Vyavahara Mayūkhū* are the governing authorities, and then to point out briefly how other Schools of Law vary on the subject.

Partition is defined in the *Mitakshara* * to be the adjustment of divers rights regarding the whole, by distributing them in particular portions of the aggregate. *Narada* says that when a division of family estate is instituted by the kindred, "that becomes a topic of litigation, called by the wise, partition of heritage" (*vibhàga*).

Firstly, then, as to the periods of partition.

According to the *Mitakshara,* there are four periods of partition, as follows; but in the Bombay Presidency partition practically now takes place only at the decease of the father, or head of the family :—

1stly. At the option of the father, or head of the family.

* Mit. ch. I. 1, 4.

2ndly. At the option of the sons (or grandsons) during the life of the father, when the mother is past child-bearing, and the father is undesirous of sexual intercourse, but does not wish for partition.

3rdly. While the mother is yet capable of bearing issue, and the father, though not consenting to partition, is old, or addicted to vicious courses, or afflicted with incurable disease, leprosy, or the like.

4thly. At, or after, the decease of the father, or head of the family.

The *Vyavahara Mayūkhū* omits, but does not deny, the third period of possible partition.

So intimate, by Hindu Law,* is the connection between partition in the lifetime of the head of the family and inheritance upon his death, that they may be said to blend; but there exists a discretion as to partition which is not found in the rule governing inheritance.

On partition, a head of a family may allot his self-acquired property as he wishes; but he has, according to the *Mitakshara*, and to the custom of Western and Southern India, no power to regulate its succession.

Property vests jointly in heirs of parallel grade, sons having equal right with their father in respect to ancestral property, and failing sons, their sons and son's sons. The right of absentees survives until the seventh generation.†

* Strange, Hin. Law, ch. VI. 122.

† Strange, Hin. Law, ch. IX. 188; Law Rep. In. App. I. 1; *Dary Singh* v. *Devi Singh*.

The heirs in natural co-parcenery are the father and his sons, son's sons, and son's grandsons, brothers and their sons, son's sons, and son's grandsons, male cousins in the male line; widows, daughters, daughter's sons, and daughter's daughters in the female line.

Sons, brothers, and daughters, when taking from the father, take equally *per capita*, and the others *per stirpes*, according to the share of the person from whom they inherit.

After partition there may be a reunion, and a subsequent partition. This can only be effected by fathers and sons, brothers and paternal uncles and nephews.

More distant relations, that is to say, those who were not parties to the partition, may live together, having goods in common, but cannot return to the position of an undivided Hindu family.

Reunion after partition is very unusual; it is not mentioned in any reported case within the Compiler's knowledge; and the Compiler has never heard of a single instance of its occurrence.

Certain kinds of property are absolutely excluded from partition. The following list of things impartible is put forth as only approximately correct:—

1. Lands endowed for religious uses. The management, however, of such lands may be divisible.

2. Regalities and principalities; but the private estate of kings and princes is partible.

3. Lands granted for the good of a family, such as *Ināms, Jahāgirs, Saramjāms.*

4. Estates held under Government renewable to the eldest son.

5. Self-acquired property gained solely by a man's own ability and at his own charges. Gains of science acquired at the family expense, and while the acquirer is receiving a family maintenance, are partible.*

6. Nuptial gifts received by the bridegroom with the bride, albeit coming out of the joint property. *Katayana* † says of such gifts: "What is received by a damsel equal in class at the time of accepting her in marriage, let a man consider as wealth received with the maiden; it is deemed pure, and promotes increase of prosperity."

7. Clothes and ornaments habitually worn by either male or female members of the family. Clothes of special value, court dresses, and the like, worn only on particular occasions, are partible.

8. House, or garden, made by one son for himself, water-pots, ornaments, utensils for food, and the like.‡

9. A gift from a friend, not given in return for a former gift taken from the common stock.§

10. Wealth, or rewards, gained by valour, *Manu* lays down: "Whatever is then received *as a reward* shall be *considered as wealth* gained by valour; that, and what is taken under the standard, are declared not to be partible."

* VI Bo. H. Ct. R. 1; *Bai Mancha* v. *Narotamdas*. See p. 59.

† Manu, ch. IX. 206; Vyavahara Mayūkhū, ch. IV. 7; Col. Dig. 463.

‡ Col. Dig. 468.

§ Ib. 450.

When the fact of partition is disputed, the presumption is that the family are united until the contrary be proved, the natural condition of a Hindu family being union.

Proof of partition, when disputed, is generally very difficult, since a family may be separated as to residence, meals, and ceremonies so as to seem to their neighbours to be divided, remaining united in interest.

On the other hand, having parted property, they may continue to live and eat together, and so seem to be united.

*Narada* * says: "If a question arise among co-heirs in regard to the fact of partition, it must be ascertained by the evidence of kinsmen, by the record of the distribution, or by separate transaction of affairs."

The separate exercise of religious duties is another and satisfactory proof of partition, as is also the parties being surety for, or bestowing gifts on, each other.†

Partition of the produce of land, without partition of the land, does not make a family divided.

A person ‡ dying during the pendency of a suit for partition is held to be undivided.

The joint performance of obsequies is not, in the face of evidence to the contrary, proof of union of estate.

By the Bengal Law a father may alienate a small portion of ancestral immoveable property at pleasure. Ac-

* Vyavahara Mayūkhū, IV. 7, 27.

† Mitakshara, II. 12, 4.

‡ Madras S. D. A. Appeal No. 86 of 1854.

cording to the text of the *Dàyabhāga,** "The prohibition is not against a donation, or other transfer, of a small part not incompatible with the support of the family." This is opposed to the practice in Western and Southern India and to the *Mitakshara.*†

Again,‡ in Bengal, sons have not ownership in their father's ancestral property until after his demise, and they cannot, as under the *Mitakshara,* force partition on their fathers.

The *Mitakshara* § Law gives equal shares to fathers and sons, whereas, by the *Dàyabhāga,*‖ the father takes a double share.

By the Malabar Law, partition can only be effected by mutual consent; the property would be divided primarily according to the number of the sisters of the common ancestor, these giving rise to the branches, and afterwards among their progeny.¶

* Dàyabhāga, II. 24.
† Mitakshara, I. 9, 10.
‡ Dàyabhāga, I. 30; II. 9, 11.
§ Mitakshara, I. 5, 5.
‖ Dàyabhāga, II. 20.
¶ Strange, Manual, p. 69.

## CHAPTER V.

### SUCCESSION.

THE normal condition of a Hindu family is that of union of estate. Therefore, when a member of an undivided family dies, his share merges in the common fund, but, on partition, would follow the rule for succession to divided property elsewhere than in Bengal, where an exception is made in favour of a childless widow, who takes as heir of her husband, to the exclusion of the coparceners.

Succession to a Hindu of divided estate, however, differs in various parts of India, but is everywhere based on the ability of the successors to perform the funeral rites of the deceased.

The following tables set out the order of succession in Bengal, Bombay, and Madras:—

*Bengal.*

1. Sons.
2. Son's sons.
3. Son's grandsons.
4. Widow.
5. Daughters.
6. Daughter's sons.

7. Father.
8. Mother.
9. Brother.*
10. Brother's sons.
11. Brother's grandsons.
12. Sister's sons.
13. Brother's daughter's sons.
14. Paternal grandfather.
15. Paternal grandmother.
16. Paternal uncle.
17. Paternal cousin.
18. Paternal grandson.
19. Paternal grandfather's daughter's son.
20. Paternal uncle's daughter's son.
21. Paternal greatgrandfather.
22. Paternal greatgrandmother.
23. Paternal greatgrandfather's brother.
24. Paternal greatgrandfather's son.
25. Paternal greatgrandfather's grandson.
26. Paternal greatgrandfather's daughter's son.
27. Paternal greatgrandfather's brother's daughter's son.

On failure of the above, the inheritance passes in similar order to the maternal side.

*Bombay.*

1. Sons.
2. Son's sons.
3. Son's grandsons.

* According to the *Dàyabhāga,* half-brothers rank between brothers and brother's sons.

4. Widow.
5. Daughter.
6. Daughter's sons.
7. Mother.*
8. Father.
9. Brother.
10. Brother's sons.
11. Paternal grandmother.
12. (Sister.) †
13. Paternal grandmother.
14. Paternal grandfather. / Brother of the half-blood.
15. Paternal grandfather's sons.
16. Paternal grandfather's son's sons.
17. Paternal greatgrandmother.
18. Paternal greatgrandfather.

And so on.

Where the *Mayūkhū* is the paramount authority, after the paternal grandfather and half-brother, the paternal greatgrandfather, father's brother, and the sons of the half-brother share the estate equally.

After these the paternal greatgrandfather and grandsons of the half-brother and father's brother's sons take in equal portions.

* In the island of Bombay and in the province of Guzerat the father ranks before the mother.

† In the island of Bombay and in the province of Guzerat only, where the *Mayūkhū* ranks above the *Mitakshara*.

*Madras.*

The Madras rule of inheritance appears to be generally the same as that of Bombay; but as the *Vyavahara Mayūkhū* is not an authority in Madras, sisters take no place in the list of heirs in any part of the Presidency.*

In Malabar and Canara an exceptional rule prevails, known as *Marūmakatāyām,* or nepotism, in the female line. The origin of this custom, according to Mr. Justice Strange, is thus:—

It is alleged that *Parasūramān,* the first King of Malabar, introduced Brahmins into the district, and gave them estates, and, to prevent the properties being split up, decreed that they should vest in the elder brothers, who alone be allowed to marry. The sons of these were to be accounted as the sons of the whole family. The junior brothers being without wives, were permitted to consort with women of the lower castes. The illegitimate offspring of these unions could not rank as Brahmins, or inherit from their fathers. Their inheritance was hence made to follow from their mothers. The lower castes fell into the same system of promiscuous intercourse among themselves. With them, the females before puberty go through a form of marriage, the bridegroom not necessarily taking the position of husband. After maturity, they consort promiscuously with men of their own, or of a higher caste.

* But see p. 43.

Parentage not being traceable in the male line, the offspring succeed to the estate in their mother's family.

In North Malabar, the *Moplas*, albeit Mahomedans, follow the rule of *Marūmakatāyām*.

Everywhere, after the nearer kindred, the *Sapindas*, *Samanodokas*, and *Bandhus* inherit in order.

*Sapindas* are the male members of the deceased's family within six degrees, downwards and upwards.

The term *Sapinda* is derived from *Pinda*, the funeral rice-ball, and it is descriptive of those who participate in offering it and water to the manes of the deceased.

*Samanodokas* are the male relations within thirteen degrees. The name is derived from *Udak*, water, which alone they offer at the obsequies.

*Bandhu* signifies remote cognate kindred. They, as *Bandhus*, make no offering; but in failure of *Sapindas*, the *Samanodokas* act as *Sapindas*, and, in failure of both, the *Bandhus* offer both the rice-ball and water.

Everywhere, among daughters, the unmarried take first, After them the more necessitous take; comparative poverty being the only criterion for settling the claims of daughters to their father's estate in the Bombay Presidency (*vide post*, page 62).*

In Bengal, daughters having male issue, or likely to have male issue, and widowed daughters with male issue, take jointly (*Dàyabhāga*, Chapter XI. Section VI. recapitulation; *Vyavahara Mayhūkū*, Chapter IV. Section VIII. 10, 11.)

* *Laxmibar* v. *Tairam*, VI Bo. H. C. R. 152.

Among mendicants, devotees, and ascetics property is transmissible among themselves (*Mitakshara,* Chapter II. Section VIII.).

The property of a dancing girl goes first to her female issue, then to her male issue, and, in failure of issue, to the troupe to which she is attached.

In default of any relative, the estate, by the theory of Hindu Law, goes to learned and venerable Brahmins; but it has been ruled by the Court of the Judicial Committee of the Privy Council that it escheats to the Crown.*

Probably the reason of this ruling is the practical impossibility of deciding what Brahmins would be entitled to such property.

The following classes are disqualified from inheriting:—

1. The impotent.
2. The born blind.
3. The born deaf.
4. The lame.
5. The born dumb.
6. Those defective of any organ.
7. Recluses.
8. Idiots.
9. The insane.
10. Illegitimate children of *Brahmins, Kshatriyas,* and *Vaisyas.*
11. Those at enmity with their parents.

* *Collector of Masulipatam* v. *Cavaly Narainapa,* VIII Moore, P. C. R. 500.

12. Outcastes.
13. Vicious persons.
14. Adulteresses.
15. Incontinent widows.

Wills are unknown to Hindu Law. No term exists in the *Dharma Shastra* for such an instrument as a will. Wills have, however, of late years, been freely used by Hindus albeit that they are unnecessary, since Hindu Law rigidly provides (as has been seen) for the descent of property to the remotest kindred, and eventually for escheat, and also arranges for the maintenance of members of a family having claim to support.

Wills are, therefore, given effect by the Courts, so far, and so far only, as they are conformable to the principles of Hindu Law, with the difference, that in parts of India (Mithila, Bombay, Southern India) where possession is a necessary condition to a gift, it is not necessary to the validity of a bequest by will.*

* *Narotam* v. *Narsandas,* III Bo. H. Ct. R. 7; *Srimati Denubandu,* VI Moore, P. C. R. 554.

AN EPITOME

OF

# HINDU LAW CASES.

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## NAVALRAM ATMARAM v. NANDKISHOR SHIO NARAYAN'S HEIRS.

(*I Bombay H. Ct.* 209. *Special Appeal No.* 633 *of* 1864.)

ON appeal from the Senior Assistant Judge of Broach.

Question, whether by Hindu Law property acquired by a woman by inheritance is *Stridhan*. *Decided* (Arnold, C.J., Forbes and Warden, JJ., *per* Forbes, J.) that immoveable property inherited by a woman is *Stridhan*, and does not pass by "the melancholy succession" to her father's heirs; that Sir F. Macnaghten is of more authority in the Bengal than in the Bombay Presidency; and that, according to the usage of the *Shrimali* Brahmins of Guzerat, in default of direct male heirs, a daughter's daughter inherits immoveable estate to the exclusion of the grandfather's heirs. *Vijia Ranjam* v. *Laxmon* (Appeal No. 175 of 1870), on the original side of the Bombay H. Ct. (Westropp, C.J., West, J.) affirms this ruling, in a *dictum* of Mr. Justice West to the effect that both the *Mitakshara* and *Mayūkhū* (the paramount autho-

rities on Hindu Law in this Presidency) class as *Stridhan*, *all* property acquired by a woman by inheritance. This ruling was followed in *Narsapa Lingapa* v. *Sakharam Krishna* (6 Bombay H. Ct. R. 215), *vide* p. 63.

*Note.*—The student is recommended to read carefully the whole report of *Vijia Ranjam* v. *Laxmon*, since it is impossible here to condense Mr. Justice West's important and exhaustive judgment.

The next case shows that the Hindu Law on this point in the Madras Presidency differs, or is differently interpreted, from that in force in Bombay.

**SENGAMALATHAMMAL v. VALAYNDA MUDALI.**

(*III Madras H. Ct. R.* 312.)

Issue, whether by Hindu Law property acquired by a woman by inheritance is *Stridhan.*

*Decided* (Bittleston, C.J., and Ellis, J.) that the general Hindu Law is, that among co-heirs the survivor takes. Sir F. Macnaghten's case noticed, of three sisters succeeding jointly to their father's estate, and dying childless. On the death of one, the two others would succeed to her share in equal proportions; and on the death of one of these, the survivor would take a life interest on the whole estate.

*Note.*—It is not, however, clear *how* the three sisters in Macnaghten's case succeeded to the estate of their father.

See Introductory Chapter on Succession, p. 37.

## REGINA v. NATHA KALIAN and BAI LAKHI.

(*VIII Bombay H. Ct. C. C.* 11.)

*Decided* (Gibbs and Melvill, JJ.) that the removal of *palla* or *Stridhan* from a husband by a wife and others does not constitute the offence of theft.

*Note on the last three Cases.*—*Stridhan,* woman's property, derived from *stri,* female, and *dhan,* wealth. It may be money, but is more usually jewels or other ornaments. It must be the gift or bequest of a husband or near relative. Property given by a stranger, or earned by a married woman herself, vests in her husband. *Stridhan* is always understood of a wife, or of a widow, since unmarried adult females are almost unknown among Hindus (Dàyabhâga, c. 4, s. 1).

The commentator *Vijnānesvara* (Mitakshara, c. 2, s. 11) says: "The enumeration of six sorts of women's property by *Manu* ('What was given before the nuptial fire, what was presented in the bridal procession, what has been bestowed in token of affection or respect, and what has been received by a woman from her brother, her mother, or her father, are denominated the six-fold property of a woman,') is intended not as a restriction of a greater number, but as a denial of a less."

**DHONDU HARI (Heir of Jaganath) v. KRISHNARAO et Al.**

(*I Bombay H. Ct.* 47).

Hari sued as heir of Dhondu, deceased, to recover Rs.2,890 3A. 0P. principal and interest on a bond for Rs.1,500, which had been passed by the father of the defendant to the plaintiff's father.

The Moonsiff, and, on appeal, the District Judge of Poona (Loughnan, J.) awarded only so much as, together with *interest already paid*, made up Rs.3,000, or double the amount of the principal sum.

The High Court (Sausse, C.J., Forbes and Newton, JJ.), *per* Sausse, C.J., laid down, overruling former decisions of the Sadar Diwani Adalat, that "the rule of Hindu Law is that no greater arrear of interest can be received than will amount to the principal sum; but if the principal remain outstanding, and the interest be paid in smaller sums than the amount of the principal money, there is no limit to the amount of interest which may be thus recovered from time to time."

The Court referred to the *Vyavahara Mayūkhū* (V. i.6, 7), where *Nilkantha*, quoting *Manu*, says: "Interest on money received at once, not month by month, or day by day as it ought, must never be more than enough to double the debt that is, more than the amount of the principal paid at the same time."

*Note.*—It is submitted that this doctrine is equitable, serving

the vigilant, and accordant with the maxim, " Vigilantibus, non dormientibus, jura subveniunt." Thus, negligence of a creditor can never subject a debtor to the shock of a claim for interest greater in amount than the principal sum; but payments obtained beforehand by the vigilance of the creditor are excluded from calculation. A creditor shall not find the law on his side in lulling a debtor into fancied security, in view of thoroughly ruining him at an opportune moment by selling his estate under a Court's decree, a mode of sale notoriously subject to the influence of combination, and unfavourable to the realization of fair value.

It is difficult to give the reason for this rule of law more exactly than by pointing to its general equity and convenience. Yet it is very certain that the Hindu jurists had other and more particular reasons, probably inapplicable to the present state of society, the tendency of which is to disuse exchange in kind, and to reduce all liabilities to a money valuation, for fixing the increment recoverable at one time on money, gems, and the precious metals at equal to the principal, while double the principal value might be recovered on inferior metals, treble on grain, fourfold on cotton and seeds, and septuple on spirits, molasses, salt, flowers, and fruit. Perhaps the proportion increases relatively to the risk incurred as to the quality and durability of the articles returned.

That the rule of *damdupat* also applies to mortgage transactions, was ruled by Westropp, C.J., and West, J., in *Narayan and Others* v. *Satwaji and Others* (IX Bombay H. Ct. 83).

## KYLASH et Al. v. DEEN PARAMANIK

(*Cal. W. R., XXIV.* 106.)

Since the last case and note have been in type, it has been ruled by the Bengal High Court (Jackson and Macdonell, JJ.) that the rule of Hindu Law that more interest than the principal cannot be recovered still obtains in the case of Hindus in the Presidency town there, within the civil original jurisdiction of the High Court, but is not applicable to Courts in the Mofussil, which are governed by the provisions of Act VI. of 1871, section 24, whereby the administration of Mahomedan and Hindu Law is restricted to matters of succession, inheritance, marriage, caste, or any religious usage or institution.

*Note.*—Act VI. of 1871, albeit a Statute of the Council of the Governor-General, is restricted to the Presidency of Bengal, and does not affect Courts other than those of that Presidency.

The effect of this ruling therefore is that the "*damdupat*" limit does not exist in the Bengal Presidency, except within the limits of the local original jurisdiction of the Bengal High Court.

## JAMYATRAM v. PARBUDAS.

(*IX Bombay H. Ct.* 116. *Special Appeal No.* 63 *of* 1870.)

Here one *Ranchod Harji* was indebted to the plaintiff, and died, leaving land which devolved on his brother and heir, *Naran Harji*, who sold it to the defendant for a good consideration, by a deed dated 1859 A.D., and registered in 1862 A.D.

In 1860 plaintiff obtained a decree against *Naran Harji* for the amount due, the land was sold under that decree to plaintiff in March, 1864 A.D., and a certificate of sale was granted to him.

In March, 1865 A.D., plaintiff sued the defendant for the land, and obtained a decree from the Subordinate Judge. On regular appeal the District Judge of Surat (Kemball, J.) differed from the Subordinate Judge's opinion that *Naran Harji* was not competent to sell the land as discharged from *Ranchod Harji's* lien, and found that the sale to the defendant in 1859 A.D. was *boná fide*.

The point argued before the High Court on special appeal (Westropp, C.J., Gibbs, and Lloyd, JJ.) was the question of the validity of a *boná fide* sale made by the heir of a deceased Hindu debtor. The Court, *per* Westropp, C.J., followed the ruling of the Bengal High Court in *Anopúma* v. *Ganga Narain* (2 Cal. W. R. 296), with a qualification, and held that, under Hindu Law, the property of a deceased Hindu is not so hypothecated for his debts as to prevent

his heir from disposing of it to a third party, or to allow the creditor to follow it into a hand of a purchaser *boná fide,* and for good consideration; but that the creditor may hold the heir personally liable for the debt if the property alienated would have been sufficient to pay the debt; if not, only to the value of the property which he received.

## NATCHIAR v. AMAUL. (The Urcand Case.)

(*Madras Select Decrees*, 485.)

When a male coparcener dies, the remaining male coparceners continue to administer and enjoy the undivided property as though no death had happened, and this as long as they remain in union.

*Note.*—This is a fundamental principle of the Hindu Law of Inheritance. The Urcand Case (1821 A.D.) is selected to illustrate it as the oldest within the Compiler's knowledge.

Daughters, until married, are entitled to maintenance, such maintenance being, under the *Mithila*, and apparently the *Madras*, rule, a charge only on the inheritance. See the *Bombay* case, *Udaram* v. *Soukabai*, *post*, p. 74.

## VINAYAK JOG v. GOVINDRAO JOG.

(*VI Bombay H. Ct.* 224.)

*Decided* (Couch, C.J., Melvill, J.) that Hindu Law does not require signature as necessary to the validity of a Will; that adoption by a widow, on verbal instructions from her husband, would invalidate a Will, but that if the Will contain ample and liberal provision for the maintenance of the son to be adopted, the Will will stand.

## MEGRAJ JAGANATH v. GOKALDAS MATHURIDAS.

(*VII Bombay H. Ct.* 137.)

On appeal from Sargent, J., the Court (Westropp, C.J., Green, J.) decided that in order to charge the indorser of a dishonoured *hundi*, Hindu Law requires reasonable, not immediate, notice of dishonour, and held that a demand for a duplicate of the *hundi* was not equivalent to notice of dishonour.

*Note.*—The Hindu Law as to *hundis* therefore differs from the English Law of Bills of Exchange, in being less strict as to notice of dishonour; reasonable notice only, not immediate notice, being required. (See also *Gopal Das* v. *Sayad Ali*, 3 Beng. L. R. 198; and *Gillard* v. *Wise*, 5 Beav. 134.)

## UJI WOMAN v. HATTU LALU.

(*VII Bombay H. Ct.* 133. *Special Appeal No.* 405 *of* 1870.)

This was an appeal from the Judge of Ahmedabad (F. D. Melvill, J.), who confirmed the decree of the Subordinate Judge. The plaintiff sued his wife, Uji, for restitution of conjugal rights, and the defence was that the plaintiff had divorced his wife, and that the custom of their caste (*Mochi*) allowed a *natra* marriage with a woman having a husband alive on the payment of a sum of money to the caste. The Subordinate Judge and the District Judge found (1) that there had been no divorce; and (2) that the custom alleged, if proved, is invalid, on account of immorality. The High Court (Lloyd and Kemball, JJ.) affirmed the decision of the Lower Courts, and held the alleged custom to be void, because immoral.

## KASHIRAV v. BHODU.

(*VII Bombay H. Ct.* 17. *Referred Case.*)

Case referred by the District Judge of Khandesh (Hobart, J.) *Decided* (Couch, C.J., Gibbs, J.) that in a suit between Hindus beyond the limits of the Presidency town, damages may be recovered for mere verbal abuse which has not caused special damage to the plaintiff.

*Note.*—So the following Bengal cases :—*Taki* v. *Koshdil Biswas* (6 C. W. R. 151); *Gourchandar* v. *Clay* (8 C. W. R. 256); *Gulam Husain* v. *Govind Das* (1 C. W. R. 19).

## DAVLATRAM v. BULAKIDAS.

(*VI Bombay H. Ct.* 24. *Original Suit No.* 553 *of* 1868.)

*Decided* (Arnold, J.) that by Hindu Law Merchant, where a *hundi* (bill of exchange), drawn payable to holder, is paid at maturity by the drawee to the holder, and such *hundi* is found to be a forgery, the holder, albeit holding *bonâ fide* for value, is bound to repay principal and interest to the drawee, if the discovery or communication to the holder of the fact of the forgery has not been delayed by the drawee's laches or negligence.

**RAINIA (Widow) v. BHAGI (Widow).**

(*Bombay H. Ct.* 66. *Original Jurisdiction.*)

A Hindu died *intestate* and *childless*, leaving two widows, Rainia, the elder, and Bhagi, the junior. *Held* (Arnold and Couch JJ.), that they succeed equally, and that the ordinary course would have been to grant a joint administration; but there being a well-grounded suspicion, short of absolute proof, that Rainia had been incontinent, the Court, *by consent*, ordered the Administrator-General to administer to the estate.

Arnold, J., said that if the parties had not consented, the Court would have been driven to grant a joint administration.

*Note.*—It would appear from this ruling that nothing less than positive proof of the incontinence of one widow is sufficient to justify the withholding of a grant of joint administration. The *Mayūkhū*, however, which is of concurrent but subordinate authority with the *Mitakshara* in Western India generally, except in Guzerat and the island of Bombay, lays down, "That even a suspicion of incontinence is enough to reduce a widow's rights to that of mere maintenance." See Introductory Chapters, p. 3.

## VALABRAHAM v. BAI HARIGANGA.

(*Bombay H. Ct., IV.* 135. *Special Appeal No.* 307 *of* 1867.)

*Decided* (Gibbs and Warden, JJ.), *per* Gibbs, J., that dumbness from birth is a cause of disherison in females as well as males, and that by the *Mitakshara,* the text-book or paramount authority in Western India, a Hindu widow born dumb cannot inherit from her husband, but is entitled only to her "*Stridhan,*" and to maintenance from her deceased husband's estate, the reason being that Hindu Jurists attribute dumbness from birth to original sin, *i.e.* to sin committed in a former state.

*Note.*—A male born dumb is also incompetent to inherit. The reader is recommended to study Mr. Justice Gibbs' learned judgment in this case.

## GANE BHIVE et Al. v. KANE BHIVE et Al.

(*IV Bombay H. Ct. R.* 169. *Special Appeal No.* 389 *of* 1867.)

*Decided* (Couch, C.J., Newton, J.), *per* Couch, C.J., that in a suit for the partition of a family estate the *onus probandi* is on the party asserting that any portion is separate property.

*Note.*—See *Prankisan* v. *Mothuromohan* (10 Moore's I. A. 403), in which it is laid down by the Judicial Committee of the Privy Council that the presumption of Hindu Law is, that property not shown to be separate is joint. See also the next case.

## BAI MANCHA v. NAROTAMDAS.

(*VI Bombay H. Ct.* 1. *Special Appeal No.* 366 *of* 1868.)

*Decided* (confirming the decree of Kemball, J., Surat) by Couch, C.J., and Newton, J., that in an undivided Hindu family, the burden of showing that certain property is self-acquired and impartible is on the person so asserting, and that scientific or professional gains, such as from the profession of advocacy, the education thereto having been acquired at the family expense, are liable to partition.

*Note.*—The reader is referred to Mr. Justice Holloway's judgment in *Chala Konda Alasain* v. *Chala Konda Ratnachalam et Al.* (2 M. H. C. R. 56) for a full review of the law on this subject.

## VITHOBA BAVA v. HARIBA BAVA.

(*VI Bombay H. Ct.* 54. *Special Appeal No.* 624 *of* 1868.)

*Decided* (Couch, C.J., Warden, J.), that, according to Hindu Law, if one build a house on ancestral land with separate funds of his own, the other members of the family have only a claim on him for other similar land equal to their respective shares.

## LAXMIBAI v. JAYRAM HARI et Al.

(*VI Bombay H. Ct.* 152. *Special Appeal No.* 226 *of* 1869.)

*Decided* (Lloyd and Melvill, JJ.), *per* Melvill, J., that by a logical interpretation of the *Mitakshara*, the text-book of paramount authority in Western India, the wives of all *gotraja Sapindas* and *Samanodakas* must be held to have rights of inheritance co-extensive with those of their husbands.

*Dictum, per* Melvill, J., that the rule laid down in Grady on Hindu Law, p. 228, that the wife, daughters, and daughters' sons, the mother, and the paternal grandmother are embraced among *Sapindas*, and that the female line extends no further, correctly describes the doctrine of the Bengal and Madras Schools.

*Note.—Gotraja Sapindas* are all the males of the deceased's family related to him, within six degrees downwards and upwards.

*Gotraja Samanodakas* are all the male descendants, ascendants, and collaterals, within thirteen degrees (West and Buhler, Hindu Law, liii, liv).

See 14 Sutherland, P. C. R. 1.

## POLI (Widow) v. NAROTAM and LALA.

(*VI Bombay H. Ct.* 183. *Special Appeal No.* 298 *of* 1869.)

*Decided* (Couch, C.J., Melvill, J.) that in Western India, among daughters, having male issue does not determine the right to inherit. Comparative poverty is the only criterion for settling the claims of the daughters among themselves. An (*nirdhan*) unendowed daughter has preference over an (*sadhan*) endowed daughter. The Court followed the decision in *Bakubai* v. *Manchurbai* (II Bombay H. Ct. R. 5), that the test of sonship is not applicable in Western India, and must be disregarded, and that among daughters, succession to their father's estate must be regulated by their comparative endowment or unendowment.

*Note.*—It appears to be otherwise where the *Dàyabhăga* is the paramount authority on Inheritance.

See *Dàyabhăga,* Chap. XI. Sect. 6. Recapitulation by *Srikrishna Tarkalankara.*

## NARSAPA LINGAPA v. SAKHARAM KRISHNA.

(*VI Bombay H. Ct. R.* 215. *Special Appeal No.* 146 *of* 1869.)

*Decided* (Gibbs and Melvill, JJ.), *per* Gibbs, J., that in a separate Hindu family a Hindu mother takes a life interest in the immoveable property of her husband dying without male issue, or in the immoveable property of her only son dying a minor, and an absolute estate in the moveable property left under such circumstances.

The Court followed the rule laid down by Arnold, C.J., in *Jamyatram* v. *Bai Jamna* (II Bombay H. Ct. R. 10), that property acquired by inheritance, and which therefore becomes part of the widow's *Stridhan*, can only consist of property inherited by her *from members of her own family*, in preference to the doctrine laid down in West and Buhler's Digest of Hindu Law.

*Note.*—The Compiler of this Epitome, with the greatest submission, concurs with the learned authors of West and Buhler's Digest of Hindu Law in questioning, as regards Western India, the soundness of the judgment in *Jamyatram* v. *Bai Jamna*. The student is recommended to read pages lxiv–lxvii of the Introduction to the Digest of Hindu Law.

## FAKIRAPA SATYAPA v. CHANAPA CHANDMALAPA.

(*X Bombay H. Ct., I.* 162. *Special Appeal No.* 313 *of* 1872.)

*Decided* by full Bench (Westropp, C.J., Melvill, West, and Nanabhai, JJ.), following *Vasadev* v. *Venkatesh* (X Bombay H. Ct. R. 139), and approving of *Tukaram* v. *Ramchandra* (VI Bombay H. Ct. R. 247), that in Western India a member of an undivided Hindu family can sell his own share of the family property.

*Note.*—The reader is referred to Chief Justice Westropp's exhaustive judgment on *Vasadev* v. *Venkatesh* (X Bombay H. Ct. R. 139). It had previously been decided in *Gando Mahadev* v. *Rambhat Bhanbhat* (I Bombay H. Ct. R. 39), Forbes and Tucker, JJ., that a member of an undivided Hindu family may *mortgage* his own share of the family estate.

## BHASKAR TRIMBAK v. MAHADEV et Al.

(*VI Bombay H. Ct.* 1. *Suit No.* 595 *of* 1868.)

*Decided* (Arnold, J.) that a Hindu widow cannot dispose of, by gift for religious or charitable purposes, the whole of immoveable property inherited from her husband without the consent of his heirs.

In Western India, a sister taking as heir of her brother takes absolutely as *Stridhan*, and her daughters, not her sons, succeed to it. The sons are not co-partners in such property with their mother.

All property inherited by a married woman, otherwise than from her husband, classes as *Stridhan*.

*Note.*—The reader is referred to Mr. Justice Arnold's long but interesting judgment, to which it is impossible to do justice in an epitome.

**KACHUBYAJI v. KACHOBA and Another.**

(*X Bombay H. Ct. R., II.* 491. *Special Appeal No.* 323 *of* 1873.)

*Decided* (West and Pinhey, JJ.) that Hindu Law requires a change of possession to accompany sale, in order to prevent successive purchasers from being cheated by successive sales of the same property, and to obviate disputes of what was really sold. Delivery of possession is the badge of effective sale.

*Harjivan Anandram* v. *Naran Haribhai* (IV Bombay H. Ct. R.) approved of. There is a note to the judgment, that it is not intended in any way to limit the power of a *mortgagor*, though out of possession, to deal in good faith with his *equity of redemption as such.*

**KOTARBASAPA v. CHANVEROVA.**

(*X Bombay H. Ct. R., II.* 403. *Special Appeal No.* 213 *of* 1873.)

*Decided* (Melvill and Pinhey, JJ.) that in Western India, a Hindu widow has no power to alienate immoveable property given to her by her husband in his lifetime, and thus becoming *Stridhan.*

**KHEMKHOR v. UNNASHANKAR RANCHOD.**

(*X Bombay H. Ct. R., II.* 381. *Civil Petition.*)

*Decided* (Westropp, C.J., Nanabhai, J.) that in the case of a *Sompura Brahmin* woman, who contracted a marriage with a *Sompura Brahmin* named *Ranchod,* during the lifetime of her first husband, but without his consent, the second marriage was invalid; but as the mother of the illegitimate children of *Ranchod,* as his concubine, she was entitled to maintenance. The Court reserved its opinion as to whether the consent of the (first) husband to the marriage with *Ranchod* would have validated the marriage with him.

**MORO VISVANATH et Al. v. GANESH VITHAL et Al.**

(*X Bombay H. Ct. R., II.* 444. *Regular Appeal No.* 29 *of* 1873.)

*Decided* (West and Nanabhai, JJ.) that sharers in undivided property not more than four degrees from the last owner, however remote from the original owner, may demand partition, and that partition, once effected, can only be reopened in case of fraud, or mistake, or subsequent discovery of family property.

It is a recognised principle that when a Hindu family has once been proved to have been joint, it lies on those who assert a subsequent separation to prove it. But it is not inconsistent with this doctrine that, as the course of nature itself brings about inevitable changes in a family, the presumption is one which grows weaker at each stage of descent from the common ancestor. Brothers are, for the most part, united; second cousins are generally separated.

*Note.*—It is a presumption in Hindu Law (see pp. 50, 58) that a family is undivided until partition be proved. The judgments in this case should be studied at length.

## DALPATSING v. NANABHAI et Al.

(*II Bombay H. Ct. R.* 326. *Special Appeal No.* 167 *of* 1864.)

*Decided* (Newton and Janardhan, JJ.) that a Hindu mother, acting as manager of the estate of a minor, has no more authority to alienate or charge that estate, than the managing member of an undivided Hindu family.

*Note.*—For the power of the managing member of a Hindu family, see Strange, H. L. 199. The manager's acts, to be of validity, must be for the general good, if not for the immediate and indispensable maintenance, of the whole family, for objects chargeable on the common stock, and for works of piety, which it concerns all should not go unperformed.

## SAVAKLAL v. ORA NIJMŪDIN.

(*VIII Bombay H. Ct.* 77. *Appeal No.* 172 *of* 1875.)

*Decided* (Westropp, C.J., Sargent, J.) that in order to give a purchaser of immoveable property from a Hindu a title as against the beneficial owner, he must show that before he completed his purchase he did everything that he ought to have done, and made all proper inquiries. The purchaser was bound to inquire how the land, which had stood within twelve years before the date of his purchase in the name of the beneficial owner, came into the possession of the vendor. When the owner was not aware of the sale of his land, but subsequently knew of it, and stood by and allowed the purchaser to build on the land, he could not recover the land without compensating the *bonâ fide* purchaser for the building erected on the land.

**BAPUJI AODITRAM et Al. v. UMEDBHAI et Al.**

(*VIII Bombay H. Ct. R. Special Appeal No.* 607 *of* 1870.)

*Held* (Melvill and Kemball, JJ.), that when a plaintiff succeeds in a suit against a Hindu son, personally, and as his father's representative, the decree should be against the son, whether he has inherited property or not, but that the decree could not be executed in case of non-inheritance.

## RAMABAI v. TRIMBAK et Al.

(*IX Bombay H. Ct. Special Appeal No.* 207 *of* 1872.)

This was an appeal from the decision on regular appeal of the Assistant Judge at Ratnagiri (Parsons, A.J.), who decided, stigmatising the defendants' conduct as disgraceful, that the plaintiff, *Ramabai*, had no claim for maintenance against the defendants, her husband's relations. *Resolved* (Sargent, C.J., Melvill, J.), that although by Hindu Law the relations of a deserted wife are not bound to support her, yet that she is entitled to maintenance to the extent of one-third of the proceeds of any property of her husband in the possession of such relations, if they were of undivided estate with her husband at the time of his death.

*Note.*—If the woman's husband deserted her after partition from his relations, his wife during coverture would have no claim on them for maintenance, but could claim maintenance on becoming a widow. See the next case.

Doubtless, if the husband died after partition, the widow would be entitled to recover all property of her late husband's share in the possession of his relations.

## UDARAM SITARAM v. SOUKABAI (Widow).

(*X Bombay H. Ct. R., II.* 483. *Special Appeal No.* 334 *of* 1873.)

*Decided* (West and Nanabhai, JJ.) that the Hindu Law contemplates that on the death of a married son his widow shall continue a member of the father's family; but while it imposes on her the necessity and the duty of attendance to the father-in-law's needs and commands, it exacts from the father-in-law, and those over whom he has control, reasonably kind and considerate treatment.

Maintenance of a widowed daughter-in-law is a primary and legal duty, and one for the imperfect performance of which the Courts must find a remedy in the award of a separate maintenance. This right of the widowed daughter-in-law is quite independent of any property acquired by her father-in-law from his deceased son, as well as of any ancestral property in which such son had a joint interest with him.

*Note.*—It appears from the Calcutta Full Bench ruling in *Khetramani* v. *Kasinath* (II Bombay H. Ct. R., A. J., 15), that the doctrine of the Mithila School of Hindu Law is contrary to that prevailing in Western India. In that case it was held, that the right to maintenance follows, and depends on, inheritance of estate.

See Introductory Chapter on Succession.

## RAJABAI v. SADU BHAWANI.

(*VIII Bombay H. Ct.* 99.)

*Decided* (Melvill and Kemball, JJ.) that, in order to avoid multiplicity of suits, an award of maintenance to a female defendant in possession should be included in the decree awarding possession to a plaintiff who, as nearest relative, is liable for such maintenance.

## TRIMBAK v. NARAYAN.

(*XI Bo. H. Ct. R., I.* 69.)

*Held* (Westropp, C.J., Kemball, J., *per* Westropp, C.J.), affirming

## NANABHAI v. NATHABHAI

(VII Bo. H. Ct. R. 46), (Couch, C.J., Melvill, J.), that in a suit to recover a *Varshasan* (an annual cash allowance, nominally, at least, for religious purposes), as in a suit for undivided family estate, one member of a Hindu united family cannot sue his coparceners for a declaration of right to the whole estate. In a united family a declaration of right to the *Varshasan* can only be obtained by one coparcener suing for partition of the family estate, inclusive of the *Varshasan*, and for a declaration of the rights of the several coparceners.

*Note.*—It has been repeatedly held by the High Court, and by the late Court of Sadar Diwani Adalat, that no member of a Hindu family can sue for any portion of the family estate; he must sue for a general partition of the whole estate of the family. In *Pandurang* v. *Bhaskar* (XI Bombay H. Ct. 72), it was ruled, *per* West, J., that the share of a coparcener in an undivided family, being in the estate as a whole and not in any particular part of it, it can be ascertained only by taking a general account of the whole estate, and making a distribution in accordance with the results of such account.

The sale or other alienation of a share in the undivided property of a Hindu family in Western India (probably not under the Mithila or the Bengal Schools) confers a right on the purchaser, and works a severance so far as to render the purchaser

a tenant in common with the parceners other than he whose share has been alienated. The alienation cannot however be completely enforced except by partition voluntary, or by a suit to which all the coparceners must be parties. (*Udaram* v. *Ranū*, XI Bombay H. Ct. R. 79, Westropp, C.J.; 4 Morris, S. D. A. Rep. 145.)

A purchaser of an undivided share is only potentially in possession, until partition take place, when his possession becomes actual.

## RAJENDO NARAIN v. SARODA SUNDARI.

(*XV C. W. R.* 548.)

*Decided* (Mitter and Paul, JJ.) that the ceremony of adoption under Hindu Law is essentially of a religious character, since every childless Hindu is deemed certain to go to the hell called "*Pūt.*"

The obligation on a childless Hindu to adopt a son is imperative as a matter of religious duty, and is not optional.

**V. SINGAMA et Al. v. VINJAMURI VENKATACHARLU.**

(*IV Madras H. Ct. R.* 165.)

*Decided* (Bittleston and Ellis, JJ.) that the performance of the fire-sacrifice (*Hom*) is not absolutely essential to the validity of adoption in a Brahmin family.

The giving and receiving of a boy capable of being adopted is sufficient. Mr. Justice Strange's opinion that the omission of the "*Hom*" ceremony invalidates adoption among the three higher castes, noted and differed from.

## RADA KISAN v. SRIKISAN.

(1 *C. W. R.* 62.)

*Held* (Steer and E. Jackson, JJ.), that a suit to set aside the adoption of a second son must be within twelve years, and that the maxim "*ignorantia legis nil excusat*" applies to questions of the Hindu Law of inheritance and adoption as well as to other laws.

*Note.*—The Limitation Statute was, at the time of this ruling, Act XIV. of 1859. The present Statute is Act IX. of 1871. It appears to be somewhat doubtful whether the period within which the suit must be brought is now six years or twelve years. (See Act IX. of 1871, Schedule II. 118–127.)

## SABALAVAMAL v. AMAKATI AMAL.

(*II Madras H. Ct. R.* 129.)

*Held* (Phillips and Holloway, JJ.), that an orphan cannot be adopted. This decision overruled *Virapannal Pilay* v. *Narain Pilay* (I Strange's Notes, 91), in which it was held that, though both parents were dead, a child might be given in adoption by his eldest brother.

*Note.*—The principle on which this case was decided was that there must be *giving*, as well as *receiving*, to constitute a valid adoption.

See Introductory Chapter on Adoption.

**SAMBHU CHOWDRI et Al. v. NARAINI et Al.**

(*V C. W. R. P. C.* 100.)

**TARA MOHAN v. KRIPA MOYI.**

(*IX C. W. R.* 423.)

It was ruled by the Judicial Committee of the Privy Council in the former case, and the ruling was followed by the Bengal High Court in the latter case, that, according to Hindu Law as set forth in the *Dàyabhāga*, and in the *Mitakshara*, an adopted son succeeds not only lineally, but also collaterally, to the inheritance of his adopted father's relations.

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**TARA MOHAN v. KRIPA MOYI.**

(*IX C. W. R.* 423.)

*Held* (Lock and Hobhouse, JJ.), following the last two cases, that an adopted son succeeds not only lineally, but collaterally; that the position of an adopted son is affected only by the birth of a subsequent legitimately-begotten son of the adopting father; and that when an adopted son comes to share with heirs other than the legitimately-begotten sons of his adoptive father in the property of kinsmen, he takes the same share that they would have taken. He represents his adoptive father, and is entitled

to the share which his father would have obtained. (*Dictum* per Lock, J.)

An adopted son of one adopted succeeds only to his adoptive father's estate.

*Note.*—See *Dattaka Chandrika*, V. 25: "Whatever share may be established by law, for a father of the same description as himself, to such appropriate share of his father does the adopted son of one adopted succeed. . . . . The same rule is, by inference, to be applied to the greatgrandson also."

## SRINIVISA v. KAPANAYANGAR and RAYAN v. KAPANAYANGAR.

(1 *Madras H. Ct. R.* 180.)

*Ruled* (Strange and Holloway, JJ.), that a member of a Hindu family cannot, as such, inherit the property of one taken out of that family by adoption. An adopted son is so severed from his natural family that no mutual rights as to succession to property can arise between them. If it would be a violation of the principle of adoption to allow a person adopted to return to his natural family, it would be a still greater violation thereof to introduce to the rights in the adoptive family the natural kindred of the adopted person.

*Note.*—It is difficult to conceive how the case for the plaintiff could have been seriously argued.

## RAKMABAI v. RADHABAI.

(*V Bo. H. Ct. R.* 181.)

*Held*, by the full Court (*per* Couch, C.J.), that in the Maratha country a Hindu widow may, without the permission of her husband, and without the consent of his kindred, adopt a son to him, if the act is done by her in the proper and *bonâ fide* performance of a religious duty, and neither capriciously nor from a corrupt motive.

In this case the boy adopted was the person who, on the death of the widow, would succeed to the property, if then living. The assent of one of the kinsmen, the father of the boy, was given, and there was no evidence to warrant the supposition that the act was done either capriciously or from a corrupt motive.

It was further held, that an elder widow may adopt a son to her late husband without the consent of the junior widow; and that a widow has no power to adopt where the husband had expressly, or impliedly, forbidden her to do so.

## COLLECTOR OF MADURA v. SREMATU MATU.

(*II Madras H. Ct. R.* 206.)

*Held* (Frere and Holloway, JJ.), that a widow can adopt a son without the consent of her husband, but not in spite of his prohibition.

*Note.*—The last two cases are concurrent, and establish the doctrine in Bombay and Madras that a widow may ordinarily adopt without the consent of her husband or of his relations.

It is not so clear as to Bengal and the Mithila.

It was held by the Bengal High Court, in *Collector of Tirhūt* v. *Harūparsad* (7 C. W. R. P. C. 71), that, in Mithila, a widow may adopt without permission according to the "*Kritrima*" form, but that such a son would not leave his own family, and would succeed only to the adoptive mother. It was held in *Tanui* v. *Sarōda* (3 B. L. R. A. C. 145), by the Bengal High Court, that the doctrine of Hindu Law, that "permission is to be presumed in the absence of prohibition," relates to a giver and not to a receiver in adoption (*Dattaka Chandrika*, I. 32). In Bareilly (*Raja Chull Singh* v. *Kūmar Singh*, 5 C. W. R. 32), the authority of the husband is essential to the validity of adoption.

## BALVANT BHASKAR v. BAYABAI et Al.

(*VI Bo. H. Ct. R. O. J.* 83.)

*Held* (Couch, C.J.), that an orphan cannot be adopted, because, to constitute a valid adoption, there must be a giving, as well as a receiving.

The learned Chief Justice quoted and followed *Sabalavamal* v. *Amakati Amal* (II Madras H. Ct. R. 129).

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## CHINNA GAUNDAN et Al. v. KUMARA GAUNDAN.

(*I Madras H. Ct. R.* 54.)

*Held* (Scotland, C.J.), that the adoption of an only son is, when made, valid in Hindu Law.

The learned Chief Justice quoted *Jaganatha* (3 Colebrooke, Dig. 243): "Let no man accept an only son, because he should not do that whereby the family of the natural father becomes extinct; but this does not invalidate the adoption of such a son actually given to him."

*Note.*—The contrast here to the Roman Law of adoption will strike many readers.

### RAJÈ VYANKATRA v. ANANDRAO NUNBALKAR.

(I *Bo. H. Ct. R.* 191.)

*Held* (Warden and Gibbs, JJ.), that if the adoption of an only son, of whatever age, has taken place, and the requisite ceremonies have been duly performed, it cannot be set aside.

If the adopted be not a proper person, the sin lies on the giver and receiver alone; the adoption must stand.

*Note.*—In contradiction to these two cases is *Raja Upendra* v. *Srimati Rani* (I B. L. R. 221). The judgment of Mitter, J., in this case will be found in the Preliminary Chapter on Adoption. (See p. 21.)

## RANJIT SINGH et Al. v. KUĒR GUJRAJI SINGH.

(*Law Rep. Ind. Ap. I.* 9.)

*Held*, by the Judicial Committee of the Privy Council, per the Right Honourable Sir R. P. Collier, on appeal from *Oudh*, that where the bulk of the estate of a Hindu family is held and managed by a single member of the family, and the other members receive and enjoy part of the lands as *sīr*, the possession of the bulk of the estate by the manager is not adverse, so as to bar, under the Limitation Act XIV. of 1859, Section 1, Clause 13, a suit by others for partition, unless there are circumstances to show that they accepted the *sīr* lands in lieu of the shares that would have been allotted to them on partition taking place.

*Note.*—*Sīr* is defined in Wilson's Glossary of Indian Revenue and Judicial Terms, to mean lands in a village which are cultivated by the hereditary proprietors themselves as their own especial share, either by their own labourers at their own cost, or by tenants at will, not being let in lease or farm.

## CHANDRABHAGABHAI v. KASUIATH.

(*II Bo. H. Ct. R.* 341.)

*Held* (Newton and Warden, JJ.), (1) that separation from her husband's family does not deprive a widow of her right to maintenance if she be indigent; (2) that her *Stridhan* should not be taken into account in computing the amount to be paid for maintenance.

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## NARSAPA v. SAKHARAM.

(*VI Bo. H. Ct. R.* 215.)

*Held* (Gibbs and Melvill, JJ.), that a woman succeeding to the immoveable estate of her minor son takes only a life interest in it. It is not *Stridhan*.

## HARI RAMCHANDRA v. MAHADAJI VISHNŪ.

(*VIII Bo. H. Ct. R.* 50.)

*Held* (Tucker and Gibbs, JJ.), affirming a former ruling of the Sadar Diwani Adalat, that in the Konkan, as well as in the Deccan, but not in Guzerat, a mortgage without possession is invalid as against a subsequent mortgage with possession, but that registration of such a mortgage cures any defect arising from the non-completion of the transaction by possession.

*Note.*—This ruling, and those on which is is founded,* are presumably grounded on the belief that mortgages without possession (*Shāhān*) are customary in Guzerat, but unrecognised by usage in the Deccan or Konkan.

The Compiler, with much submission, is of opinion that the distinction between the mortgage custom of Guzerat and the rest of the Bombay Presidency is a purely arbitrary distinction made by the Courts, and that *Shāhān* mortgages are, or rather were (for the public know that they are now a bad security in law), as common in the Deccan and Konkan as in Guzerat.

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* *Tajaram* v. *Mahomad et Al.*, 2 Borr. 147; *Mahomad Khan* v. *Keroji et Al.*, Frere, Scl. Dec. S. D. A. 187; *Govurdhan* v. *Sakharam*, 8 Harrington, 189.

**VITHOBA v. CHOTALAL.**

(*VII Bo. H. Ct. R.* 116.)

*Held* (Gibbs and Melvill, JJ.), that the Hindu Law is in accordance with the Roman and English Laws that, in the absence of any express agreement to the contrary, a creditor in whose hands a pledge has perished by accident, and without negligence on his part, is entitled to proceed against his debtor for recovery of the debt.

*Note.*—See *Vyavahara Mayūkhū,* V. II. 4. *Brahaspati:* "If a pledge be destroyed by the act of God, or of the king, the creditor shall either obtain another pledge or receive the sum lent, together with interest." *Vyasa:* "If the pledge be destroyed by the act of God, or of the king, no fault is by any means imputable to the creditor."

*Katyayana:* "When a pledge perishes without any fault of the creditor . . . . the debtor is not exonerated from the debt."

So also *Yajnavalkya.*

## KAMASKI v. NAGARATHNAM.

(*V Madras H. Ct. R.* 161.)

*Held* (Scotland, C.J., and Collett, J.), that the daughters of dancing women must, as regards inheritance, be taken as sons, and held to inherit from the mother, similarly to sons under the ordinary law of inheritance.

*Note.*—See Strange, Manual, 361.
The dancing women are never married.

## VIJIA RANJAM et Al. v. LAXMON et Al.

(*VIII Bo. H. Ct. R.* 244.)

*Held, inter alia* (Westropp, C.J., and West J.), that the *Asura* form of marriage, found to be prevalent among the Bhandaris, is probably derived from the aboriginal inhabitants of India, or those occupying it before the Aryan invasion, which of itself is sufficient to account for the disfavour with which it is viewed by Brahmins. The principal characteristic of the *Asura* form is the giving by the bridegroom of *dej*, or a money payment to the father of the bride.

By the *Mitakshara* a woman's *Stridhan*, if she has been married by the *Asura* form, goes to her mother, to her father's *Sapindas*, and to her mother's next of kin, not, as if the marriage had been by one of the four approved forms, to her husband and his *Sapindas*.

*Note.*—Mr. Justice West's most learned judgment in this case is a complete examination of the doctrine of, and practice pertaining to, *Stridhan*. It may be safely asserted that no writer, Hindu or English, has treated the subject with the same erudition and thoroughness.

The Compiler's experience, however, is that the *Asura* form of marriage does not prevail among the Bhandaris of the Konkan, but that they use the *Brahma* form, making often a secret payment of money.

See Introductory Chapter on Marriage, p. 9.

**SAKHARAM v. VITHŪ et Al.**

*(II Bo. H. Ct. R. 237.)*

*Held* (Westropp and Tucker, JJ.), that by Hindu as by English Law, the right of a mortgagor to redeem does not, in the absence of any circumstances or language indicating a contrary intention, arise any sooner than the right of the mortgagee to foreclose.

*Burrowes* v. *Molloy* (2 Jo. & Lat. 521) referred to, and the declaration of *Brahaspati* (1 Colebrooke, Dig. 105) referred to.

**COLLECTOR OF MADURA v. RAMALIGA SATHUPATI and Others.**

**ANANDAYI and Others v. NATCHIAR and Others.**

(*II Madras H. Ct. R.* 206. *Appeals.*)

These were regular appeals from the District Court of Madura.

*Held* (Frere and Holloway, JJ.), that a widow is competent to adopt a son without the expressed consent of her husband, but with the consent of a majority of the surviving male kindred (*Sapindas*) of her husband.

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**ANNADI AMAL v. KUP-PAMAL.**

(*III Madras H. Ct. R.* 282.)

*Held* (Collett and Ellis, JJ.), that a widow cannot make a valid adoption without the consent of her husband or of his (*Sapindas*) male relations.

*Note.*—The rulings in these two cases are on the same basis, that in ancient times the practice among Hindus was, that on the death of a man without male issue, one of his *Sapindas* raised up male issue for him on his widow, and that the son thus begotten became as the son of the deceased husband. When this practice fell into disuse, before the time of *Manu*, the want of a son came to be supplied by the fiction of filiation by adoption by the father.

From this naturally followed the sufficiency of adoption by a widow, with the expressed consent of her husband, and, by a natural extension of the fiction, there followed recognition of adoption by a widow by consent only of her husband's *Sapindas*.

## KATIAMAL v. RADA KRISTNAIYAR.

(*Madras Jurist*, *X.* 12, 442.)

In this case the plaintiff was one of three sisters whose father had adopted a son. The adopted son succeeded to the estate, and died without issue.

The mother took the estate, and alienated a portion thereof. The plaintiff sued (1) for her one-third share of the property, and (2) to set aside the alienations made by the mother.

*Held* (Morgan, C.J., and Innes, J.), that the mother took only a life interest, and that the restrictions on her power of alienation were inseparable from her estate, and independent of the existence of heirs capable of taking on her death.

*Held*, also, that a sister is not a *Sapinda* to her brother, but that a long line of heirs interpose between surviving brothers and a sister.

*Note.*—The judgment does not lay down the exact position of a sister as heir to her mother. It is evident that she must be postponed to all *Sapindas*, and probably, except where the *Vyavahara Mayūkhū* is the paramount authority, also to *Samanodakas*, since she cannot perform even the *divided* oblation.

## STRIMUTTŨ NACHIAR et Al. v. DORASINGA TEVAR.

(*VI Madras H. Ct. R.* 310.)

*Held* (Scotland, C.J., and Holloway, J.), that the law of inheritance having an essential relation to the offerings to the dead, the sons of daughters when they succeed to the property of their grandfather take by direct right of succession, as being his nearest heirs, like the *Sapindas* of a man succeeding to his property on the death of his widow, but *per capita*, not, as *Sapindas* take, *per stirpes.*

*Note on the last two cases.*—The imperative obligation to perform *Shradh* (funeral oblations) is the key to the entire Hindu Law of Inheritance.

The reason why *Sapindas* take *per stirpes,* and not as daughters' sons, inheriting from their grandfather, *per capita,* appears from the *Dàyabhāga*:* "Since benefits are derived from the great-grandson as well as from the son, the term son extends to the great-grandson, for as far as that degree, descendants equally confer benefits by presenting oblations of food in the prescribed form of half-monthly obsequies."

See also *Dàyabhāga,* Chap. III. 1, 18.

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* Dàyabhāga, Chap. XI. 1,

**TIRAMA MAGAL v. RAMASVAMI et Al.**

(*I Madras H. Ct. R.* 214.)

*Held* (Strange, J., and Holloway, J.), that the definition of an idiot under Hindu Law is precisely the same in effect as that of Lord Coke. (Co. Lit. 247 a.) Coke's definition is: "The idiot is he which from his nativitie, by a perpetual infirmitie, is non compos mentis."

The *Mitakshara** defines an idiot to be "a person deprived of the internal faculty, one incapable of discriminating right from wrong." Such an one is disqualified from inheriting, the reason being his unfitness for the ordinary intercourse of life.

*Per* Holloway, J., that it would be most mischievous to interfere with the disposition or enjoyment of property merely on account of eccentricity of conduct. The imprudent and profligate entail misery upon themselves and others, but they are not on that account to be treated as insane.

By Hindu Law an idiot is one who has been of unsound and imbecile mind from his birth.

* Mitak. Chap. II. X. 2.

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# THE LAW RELATING TO SHIPMASTERS AND SEAMEN.

## REVIEWS OF THE WORK.

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"Taking the whole British Empire, the tonnage of sailing and steam vessels registered in the year 1873 was, we learn in the preface, no less than 7,294,230, the number of vessels being 36,825, with crews estimated, inclusive of masters, at 330,849; but the growth of our mercantile fleet to such gigantic proportions is scarcely attributable to any peculiar attention on the part of the Legislature to its safety and welfare, for, as Mr. Kay justly says, 'it is remarkable that in England, the greatest maritime State the world has ever seen, no proper precautions were taken before the year 1850 to protect the public from the appointment of ignorant and untrustworthy men to these important posts'—the command of vessels, 'in which property and life are committed to them under circumstances which necessarily confer almost absolute power and at the same time preclude for long periods the possibility of any supervision.' The French, he tells us, had an ordinance as early as the year 1584, requiring the master to be examined touching his experience, fitness, and capacity. But in England the indifference on this subject was more apparent than real; it arose, we believe, out of the dislike of interference with personal concerns and private enterprise which is so strongly marked in our national character, nor must we forget that some of the most glorious achievements in our nautical annals have been accomplished by men not strictly trained to the sea, and this fact, no doubt, contributed to the reluctance manifested by the Legislature to apply the principles of paternal government to the protection of our seamen; for the going and coming of hundreds of thousands over the ocean for the purposes of business or pleasure had then but lately commenced; and, moreover, probably it was feared that too much care for the welfare of our seamen would have the effect of diminishing the hardihood, self-reliance, and daring which had up to that time made them the envy of the world.

"In 1854 the Merchant Shipping Act was passed, repealing the Act of 1850. Under its provisions the Board of Trade received its present extensive authority over merchant ships and seamen, Local Marine Boards were constituted for the examination of masters and mates of foreign-going and home passenger ships, Mercantile Marine officers established for the registration of seamen, and Naval Courts for the investigation of complaints against masters, and other matters. Without doubt the result of this system of compulsory examination has been beneficial, and the master may also possess those other qualifications which cannot be subjected to examination. But it is not enough now-a-days that he should be honest, skilful, courageous, and firm; he must also, if he would steer clear of rocks other than those marked on the chart, be something of a lawyer. This, it might seem, would apply equally to all men having the conduct of important interests, and coming into contact with large numbers of men, but to no one else is so large a discretionary power granted, and the very fact that his use of it is not very severely scrutinised, only adds to the caution with which it should be exercised. And then there are many incongruities in his position. He may have a share in a ship, and yet he is but the agent of the other owners; though, if he has no share, and in a case of necessity hypothecate the ship, he also binds himself in a penalty to repay the sum borrowed. We can make no charge of redundancy or omission against our author; but if we were called upon to select any one out of the fifteen parts into which the two volumes are divided as being especially valuable, we should not hesitate to choose that numbered three, and entitled 'The Voyage.' There the master will find a succinct and compendious statement of the law respecting his duties, general and particular, with regard to the ship and its freight from the moment when, on taking command, he is bound to look to the seaworthiness of the ship, and to the delivery of her log at the final port of destination. In Part IV. his duties are considered with respect to the cargo, this being a distinct side of his duplicate character, inasmuch as he is agent of the owner of the cargo just as much as the owner of the ship.

"Next in order of position come 'Bills of Lading' and 'Stoppage in Transitu.' We confess that on first perusal we were somewhat surprised to find the subject of the delivery of goods by the master given priority over that of bills of lading; the logical sequence, however, of these matters was evidently sacrificed, and we think with advantage to the author's desire for unity in his above-mentioned chapters on 'The Voyage.' That this is so is evidenced by the fact that after his seventh chapter

# THE LAW RELATING TO SHIPMASTERS AND SEAMEN.

## REVIEWS OF THE WORK—*continued.*

on the latter subject he has left a blank chapter with the heading of the former and a reference *ante*. 'The power of the master to bind the owner by his personal contracts,' 'Hypothecation,' and 'The Crew,' form the remainder of the contents of the first volume, of which we should be glad to have made more mention, but it is obviously impossible to criticize in detail a work in which the bare list of cited cases occupies forty-four pages.

"The question of compulsory pilotage is full of difficulties, which are well summed up by Mr. Kay in his note to page 763:—'In the United States no ship is bound to take on board a pilot either going in or coming out of the harbour, but if a pilot offers and is ready, the ship must pay pilotage fees whether he is taken on board or not.' Ships do not exist for pilots, but pilots for ships, so that this option in the use of the pilot, and obligation in the matter of fees, appears to us to be exactly that solution of the difficulty which should not have been arrived at; and, moreover, it is open to the first objection urged by Mr. Kay against the compulsory system of pilotage, which is, that it obliges many ships which do not require pilots to pay for keeping up a staff for those who do. Seven other cogent reasons, for which we must refer the reader to the book itself, though most of them, indeed, will instantly present themselves to the minds of sailors without even an effort of memory, are noted. Section 338 of the Merchant Shipping Act provides that no owner or master of any ship shall be answerable to any person whatever for any loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of such ship within any district where the employment of a pilot is compulsory by law. If he interferes to correct the pilot in the handling of a ship, with the peculiarities of which the latter cannot generally be acquainted, he may render himself and the owners liable in case of accident, and so a premium is offered to his indifference, proof being always required that the damage was occasioned solely by the pilot's neglect or fault, to entitle the owners to the benefit of this section. The decision in the case of the *General de Caen* well illustrates some of the difficulties surrounding the subject. She was a French ship upon the Thames, where the employment of a pilot is compulsory, and she, therefore, took on board a pilot as well as a waterman to take the wheel in consequence of none of the crew being able to understand English. The waterman put her helm up instead of luffing as the pilot ordered, whereby a barge was run into and damaged. The French owner claimed under Section 389 of 17 and 18 Vic., c. 104. It was held that the pilot was not answerable for the waterman's incapacity or fault; that the pilot gave the proper orders; that it would be contrary to justice to say that the pilot was solely liable for the collision; that the waterman was the servant of the owners, and that they, therefore, were liable. The real question at issue seems to have been whether the English pilot ought to have spoken French or the French ship to have had on board a helmsman who could understand English, and the corollary, when the decision had been given in favour of the former, that the Government officer, when engaging the helmsman, was acting merely as the agent of the French owners.

"The master has a large authority over the passengers on board his ship, equal in cases of great emergency to that which he possesses over the crew. Lord Ellenborough has decided—it will comfort intending travellers by sea to hear, especially if this country should again become involved in a war with a nation which, unlike Ashanti and Abyssinia, possesses a navy—that a master exceeded the limits of his authority in placing a passenger who refused to fight on the poop, though willing to do so elsewhere, in irons all night on that particular part of the ship to which he had objected.

"It is for the interest and security of commerce and navigation that it should be generally known that the amount of service rendered is not the only or proper test by which the amount of salvage reward is estimated, but the Court will grant to successful salvage an amount which much exceeds a mere remuneration for work and labour in order that the salvors should be encouraged to run the risk of such enterprises and go promptly to the succour of lives or vessels in distress, though they must take care that they do not by their subsequent conduct forfeit their claims to such reward.

"That it should be necessary to entice men by money to save the lives of their fellow-creatures is not a matter for congratulation; still it was no doubt to some extent anomalous that formerly, whilst large proportionate sums were paid for the recovery of property, for the rescuing of human life unless associated with property, no salvage reward could be recovered. But by Section 458 of the Merchant Shipping Act the preservation of human life is made a distinct ground of salvage reward, with priority over all other claims for salvage where the property is insufficient, and if the value of the property is not adequate to the payment of the claim for life-salvage alone, the Board of Trade is empowered to award to the salvors such sum as it deems fit, either in part or whole satisfaction.

"There is, perhaps, no species of service liable to a greater variety of circumstances under which it can be performed than salvage. Consequently we cannot be surprised that questions of this kind frequently come before the Courts, and that the number of decided cases is very large; but Mr. Kay has succeeded in an admirable way in extracting the main points connected with each case, and in presenting them in as few words as possible. Of course fuller information may sometimes be required, but the reader will then know where to find it.

"In conclusion, we can heartily congratulate Mr. Kay upon his success. His work everywhere bears traces of a solicitude to avoid anything like an obtrusive display of his own powers at the expense of the solid matter pertaining to the subject, whilst those observations which he permits himself to make are always of importance and to the point; and in face of the legislation which must soon take place, whether beneficially or otherwise, we think his book, looking at it in other than a professional light, could scarcely have made its appearance at a more opportune moment."

# THE LAW RELATING TO SHIPMASTERS AND SEAMEN.

## REVIEWS OF THE WORK—*continued.*

### From the LIVERPOOL JOURNAL OF COMMERCE.

"'The Law relating to Shipmasters and Seamen—such is the title of a voluminous and important work which has just been issued by Messrs. Stevens and Haynes, the eminent law publishers, of London. The author is Mr. Joseph Kay, Q.C., and while treating generally of the law relating to shipmasters and seamen, he refers more particularly to their appointment, duties, rights, liabilities, and remedies. It consists of two large volumes, the text occupying nearly twelve hundred pages, and the value of the work being enhanced by copious appendices and index, and by the quotation of a mass of authorities. . . . In a short note of dedication Mr. Kay observes that he had been engaged on it for the last ten years. The result of this assiduity and care has been the production of a standard work on the subject to which it relates. . . . As to the value of the work itself, it can hardly be properly treated of in limited space. It is divided into fifteen parts which have reference to the public authorities having control in shipping matters, the appointment, certificates, &c., of the master, his duties on the voyage, his duties and powers with respect to the cargo, bills of lading, stoppage *in transitu*, personal contracts binding the shipowner, hypothecation, the crew, pilots, passengers, collisions, salvage, the master's remedies and his liabilities. From this range of topics it will be seen that *the work must be an invaluable one to the shipowner, shipmaster, or consul* at a foreign port. The language is clear and simple, while the legal standing of the author is a sufficient guarantee that he writes with the requisite authority, and that the cases quoted by him are decisive as regards the points on which he touches. The work is excellently 'got up,' and its appearance is quite consistent with its standard character as a treatise on the law relating to shipmasters and seamen."

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"Of volumes with such a magnitude of pages, filled with abstruse matter, made plain and clear, we have only room to give the heads of the Analysis of Contents, without alluding to the various branches. They are laid out in fifteen parts, viz.: The Public Authorities; Appointment, Certificates, &c. of the Master; the Voyage; Master's Duties and Powers with respect to Cargo; Bills of Lading; Stoppage in Transitu; When the Master may bind the Shipowner by his Personal Contract; Hypothecation; the Crew; Pilots; Passengers; Collisions; Salvage; the Master's Remedies and his Liabilities. Then follow the appendices, thirty-four in number, which contain a great deal of maritime law information, as also the 'Index to Cases,' and here the immense labour of the compiler is seen in its fullest and most distinct sense. The index of cases decided in Courts of Final Appeal, relating to maritime disputes, enumerated in lines alphabetically, makes forty-two long pages. These are necessarily brief in abstract, but they are *really of interest to all shippers and consignees, to masters, owners, and seamen, to underwriters, and to the assured.* It would seem hardly possible that so much valuable and really interesting information could be thrown into so confined a space.

"In the abstracts of law cases the decisions of the Supreme Court of the United States are referred to very frequently, as precedents in maritime law, and we note, under the head of 'The Master's Duties to the Passengers, irrespective of the statutes,' that the decisions of our courts are oftentimes mentioned."

### From the LAW JOURNAL.

"The author tells us that for ten years he has been engaged upon it. . . . Two large volumes containing 1181 pages of text, 81 pages of appendices, 98 pages of index, and upwards of 1800 cited cases, attest the magnitude of the work designed and accomplished by Mr. Kay.

"The total merchant shipping of the United Kingdom consisted in 1873 of 21,581 vessels of 5,748,097 tons, manned by 202,239 seamen; and the total merchant shipping of the whole British Empire consisted of 36,825 vessels of 7,294,230 tons, manned by 330,849 seamen. Mr. Kay justly observes upon these figures: 'For such a vast mercantile fleet, one would have thought that every thing would have been done to render the law affecting such a vital part of our Imperial Empire as clear, as simple, and as easily to be inquired into and understood, as was possible.' Unfortunately, everyone knows that the exact contrary is the case, and that, confused as is the condition of almost every department of English jurisprudence, no one department is in a more hopeless and chaotic state than that which embraces the merchant-shipping laws and regulations. Mr. Kay tells us that these laws are to be discovered by researches into 'thirty-five statutes, seventeen orders in council, great numbers of instructions of the Board of Trade; great numbers of bye-laws and regulations of the Trinity House and of the different ports; and great numbers of cases decided on numberless points in the various courts.' Now, in default of a code setting forth in a clear and comprehensive manner the law contained in this *rudis indigestaque moles*, and until such a code is formed, the only anchor of salvation to mariners and lawyers alike is some one or more treatises on which reliance can be placed. Mr. Kay says that he has 'endeavoured to compile a guide and reference book for masters, ship agents, and consuls.' He has been so modest as not to add lawyers to the list of his pupils; but *his work will, we think, be welcomed by lawyers who have to do with shipping transactions, almost as cordially as it undoubtedly will be by those who occupy their business in the great waters.*

# THE LAW RELATING TO SHIPMASTERS AND SEAMEN.

## REVIEWS OF THE WORK—*continued.*

"We must not be understood as intimating that all and every part of this work has a legal interest. Much of it concerns only the practical life of the master and crew. But there are many chapters to which members of both branches of the profession, and especially solicitors residing at the great ports, will turn with gratitude to the author in moments of difficulty. For example, Part IV. is on the master's duties and powers with respect to the cargo, and deals with hypothecation, freight, lien, and delivery. Part V. contains an exhaustive treatise on bills of lading, with special reference to the effect of the transfer of the bill of lading upon the property named in the bill. Part VI. explains fully the right of stoppage *in transitu*, and Part VII. teaches when the master may bind the shipowner by the master's personal acts. So again Part XIII. deals with the principles of salvage, and the nature and reward of salvage services. The great bulk of the book, however, is devoted to the consideration of the rights, duties, and obligations of the master and of the crew. After explaining the powers and prerogatives of the several public authorities to whose control mariners are subject, the author proceeds to the appointment, certificates, &c. of the master, his general duties and authorities on the voyage towards the shipowner, the charterer, the underwriter, and the harbour master. Next are considered the duties and powers of the master with respect to the cargo, his power to bind the shipowner by contracts either for necessary supplies or for absolute sale of the ship, and his power of hypothecation. Having so considered the position of the master, the author next deals with the crew, their engagement, wages, legal rights to wages, and modes of recovery; their discipline, and the legislation for their protection in life, limb, and pocket. Pilots and pilotage are then considered at great length; and then we have a survey of the rights and liabilities of passengers, and the statutable provisions for their protection. Collisions, salvage, the master's personal remedies and liabilities, complete the list of subjects. The appendices contain an immense variety of forms, tables, scales, &c., embracing fees, medicines, boats, protests, bottomry, and *respondentia* bonds, orders in council, instructions to emigration officers, lights, bye-laws as to pilots, remuneration of receivers, and other matters and things too numerous for detail.

"The volumes are well printed, with wide margins, and present a smart appearance both in cover and page; and, while they will find their way to the cabins of the masters of all big passenger steamers and merchantmen, they will, we believe, also adorn the shelves of many lawyers."

### From the MANCHESTER EXAMINER.

"In a brief notice no idea could be given of the importance, or even the extent, of the details referred to in Mr. Kay's book, and a catalogue of the contents would constitute a small pamphlet. There are also in the course of the treatise interesting historical references, and the duties and responsibilities of passengers are not overlooked. Speaking generally of the law of shipping, as defined and described in the book before us, we may say that the seaman has a Magna Charta of his own. The rights of the owner, of the ship's officers, and of the sailors are all clearly recognised on the statute book, and the penalty for the infringement is in every case specified. We read of the precautions for the safety of life and property exacted by the authorities, and of the conditions which must be fulfilled before a vessel is pronounced seaworthy; yet we learn with amazement that before 1850 no proper precautions were taken in England to protect the public from the appointment of ignorant and untrustworthy men as masters of ships. In illustration of the various branches of his subject Mr. Kay refers to more than a thousand cases. The appendices also contain a considerable amount of valuable information, and the index is so complete that it indirectly serves the additional purpose of a glossary. In his preface Mr. Kay modestly hopes that his book 'may prove to be a useful book of reference for intelligent masters and for ship agents and consuls in foreign ports on matters relating to shipmasters and seamen.' That it will prove useful to them we have no doubt whatever, and that it will be gratefully accepted as a boon by many others we are equally sure. Directly or indirectly, it cannot but prove an important work of reference to all who are engaged in the shipping trade, and Mr. Kay deserves the thanks of the commercial as well as of the shipping community for having so successfully carried out his arduous task."

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